



**Public Private Partnership
in
Generation of Electricity**

**POWER SUPPLY AGREEMENT –
Design, Build, Finance, Own and
Operate (PSA-DBFOO)**

**Tamil Nadu Power Distribution Corporation
Ltd**

Government of Tamil Nadu

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Part I

Preliminary

POWER SUPPLY AGREEMENT¹

THIS AGREEMENT is entered into on this the ... day of ..., 20.....

BETWEEN

- 1 The Tamil Nadu Power Distribution Corporation Limited, a company incorporated under the provisions of the Companies Act, 1956/2013, represented by its [Managing Director/Authorised Person] and having its registered offices at (hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First Part;

AND

- 2Limited, a company incorporated under the provisions of the Companies Act, 1956 / 2013 represented by its [Managing Director/Authorised Person] and having its registered office at, (hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

WHEREAS:

- A. The Utility had resolved to procure electricity from a power generating station with an installed capacity of 660 MW (1 x 660 MW) on the land admeasuring 126 acres located at Ernavur Village, Dist. Ennore - Thiruvallur, Tamil Nadu that would dedicate a contracted capacity of 617 MW for production of electricity and supply thereof to the Utility on design, build, finance, own and operate (the “**DBFOO**”) basis by sourcing fuel from the Allocated Coal Linkage arranged by the Utility as per SHAKTI Policy in accordance with the terms and conditions to be set forth in a power supply agreement to be entered into under and in accordance with the provisions of the Electricity Act, 2003.
- B. The Utility had accordingly invited proposals by its Request for Qualification-DBFOO dated *** (the “Request for Qualification-DBFOO” or “RFQ- DBFOO”) for selection of Bidders who would design, build, finance, own and operate a Power Station and offer to supply electricity there from the selected Bidder.

¹ Instructions for Bidders

The draft Power Supply Agreement issued to the Bidders may be customised for bid-specific purposes in accordance with the instructions below:

Note 1: The provisions in curly brackets are to be retained in the draft Power Supply Agreement forming part of Bidding Documents and shall be suitably modified by the Bidders after the issue of Letter of Award (LOA) in order to reflect the bid specific particulars in the Power Supply Agreement. (See Appendix-I)

Note 2: Blank spaces are to be retained in the draft Power Supply Agreement and shall be suitably filled by the Bidders after the issue of LOA in order to reflect bid specific particulars in the Power Supply Agreement. However, blank spaces shall be retained in all Schedules which contain formats that are to be used after the Power Supply Agreement is executed. (See Appendix-I)

Note 3: Footnotes marked “£” are to be retained in the draft Power Supply Agreement. These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Power Supply Agreement. However, footnotes marked “\$” or “\$\$” shall be retained in the Power Supply Agreement as a part thereof. (See Appendix-I).

- C. The Utility had prescribed the technical and commercial terms and conditions by its Request for Proposal-DBFOO dated *** (the “**Request for Proposals-DBFOO**” or “**RFP-DBFOO**”), and invited Bids in accordance with the Guidelines issued by the Central Government under Section 63 of the Act vide Notification No. ... dated ... from the Bidders selected pursuant to the RFP- DBFOO for undertaking the Project.
- D. After evaluation of the Bids received, the Utility had accepted the Bid of the selected Bidder and issued its Letter of Award No. dated ... (hereinafter called the “**LOA**”) to the selected Bidder requiring, *inter alia*, the execution of this Power Supply Agreement within 30 (thirty) days of the date of issue thereof.
- E. The Utility has obtained the Letter of Assurance, dated [**] issued by [**] (“**Coal Supplier**”) in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement (“**Letter of Assurance**” appended herein as **Annexure 1**) for the purposes of the Contracted Capacity;
- F. In pursuance of the LOA, the Parties have agreed to enter into this Power Supply Agreement on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Power Supply Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 39) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State where the Power Station is situated are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**kWh**” shall mean kilowatt hour and “**kCal**” shall mean kilo calories;
- (r) “**lakh**” shall mean a hundred thousand (100,000) and “**crore**” shall mean ten million (10,000,000);
- (s) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (t) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any

description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Utility hereunder or pursuant hereto in any manner whatsoever;

- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Utility's Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Utility's Engineer, as the case may be, in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");
- (z) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (za) capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Supplier to the Utility and/ or the Utility's Engineer shall be provided free of cost and in three copies, and if the Utility and/or the Utility's Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

Provided that calculation of Fixed Charges and Fuel Charges along with the components of Fuel Charge shall be done upto 4 (four) decimal places, with the fifth digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II

The Supply Contract

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Contract Period:

- (a) construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement utilizing the Allocated Coal Linkage in accordance with the terms contained herein read with the terms and conditions of the Fuel Supply Agreement and the Letter of Assurance;
- (b) supply of electricity to the Utility in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Supplier in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.

2.2 Effectiveness of the Agreement

Agreement shall come into force and effect from the date of execution of this Agreement by the Parties and shall remain valid until the Transfer Date.

ARTICLE 3

GRANT OF SUPPLY CONTRACT

3.1 The Supply Contract

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Utility hereby awards, to the Supplier, the supply contract set forth herein including the right and authority to utilise the Allocated Coal for producing electricity at the Power Station for supply thereof to the Utility (the “**Supply Contract**”) for a period of 34 (thirty four) years commencing from the Appointed Date, and the Supplier hereby accepts the Supply Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Supply Contract hereby awarded shall oblige or entitle (as the case may be) the Supplier to:
- (a) finance, construct, operate and maintain the Power Station in accordance with this Agreement;
 - (b) procure Availability of the Contracted Capacity for production of electricity and supply thereof to the Utility under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;
 - (c) to receive Fixed Charge from the Utility in respect of the Availability of Contracted Capacity
 - (d) to receive Fuel Charge in accordance with the provisions of this Agreement;
 - (e) perform and fulfil all of the Supplier’s obligations under and in accordance with this Agreement;
 - (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Supplier under this Agreement; and
 - (g) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Supply Contract hereby granted or on the whole or any part of the Power Station nor sell, transfer, exchange, lease or part possession thereof to the extent of Contracted Capacity, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.2 Extension of Contract Period

3.2.1 Omitted.

3.2.2 Omitted.

3.3 Substitution of the Utility

The Parties expressly agree that the Utility may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws, or if it is unable to discharge its liabilities and obligations under this Agreement, substitute itself by another Distribution Licensee(s) and upon such substitution, all the functions, rights and obligations of the Utility under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws. Provided, however, that prior to any substitution hereunder, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 23.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 20, 28, 36 and 38, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Supplier may, upon providing the Performance Security to the Utility in accordance with Article 9, at any time after 60 (sixty) days from the date of this Agreement or on an earlier day acceptable to the Utility, by notice require the Utility to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Utility shall be deemed to have been fulfilled when the Utility shall have:

- (a) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 23.1;
- (b) executed the Deed of Hypothecation in accordance with the provisions of Clause 23.1.2;
- (c) procured approval of the Commission for payment of Tariff by the Utility to the Supplier in accordance with the provisions of this Agreement; and
- (d) procured the consent of CIL/ name of relevant CIL subsidiary for execution of Fuel Supply Agreement.

Provided that upon request in writing by the Utility, the Supplier may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Supplier within a period of 12 (twelve) months from the date of this Agreement shall be deemed to have been fulfilled when the Supplier shall have:

- A. provided Performance Security to the Utility within the period prescribed in Clause 9.1.1 of this Agreement;
- B. executed and procured execution of the Substitution Agreement;
- C. Omitted;

- D. executed the Financing Agreements and delivered to the Utility 3 (three) true copies thereof, duly attested by a Director of the Supplier;
- E. delivered to the Utility 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Supplier, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- F. Omitted;
- G. delivered to the Utility, a legal opinion from the legal counsel of the Supplier, with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;
- H. deposited a certified true copy of this Agreement with the SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Clauses 24.3.3 and 31.6.1;
- I. Omitted and
- J. Omitted
- K. Obtained the letter of assurance, dated [**] issued by [**] (“**Coal Supplier**”) in the name of the Supplier for the supply on a linkage basis, [**] tonnes per annum of [**] grade coal for the entire Term of this Agreement (“**Letter of Assurance**” appended herein as **Annexure 1**) for the purposes of the Project.
- L. Omitted
- M. procured environmental clearance for the power station
- N. time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-E

Provided that upon request in writing by the Supplier, the Utility may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 or grant any extension thereof for the satisfaction of any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Utility may, in its sole discretion, grant any waiver/extension hereunder, with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Utility

In the event that (i) the Utility does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof or the extended period provided in accordance with this agreement,

and (ii) the delay has not occurred as a result of breach of this Agreement by the Supplier or due to Force Majeure, the Utility shall pay to the Supplier, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 30% (Thirty percent) of the Performance Security.

4.3 Damages for delay by the Supplier

In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Utility or due to Force Majeure, then subject to Article 14.1.3 the Supplier shall pay to the Utility Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Performance Security. Upon reaching 30% of the Performance Security, the Utility may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Utility in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the Utility shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Contract Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Contract Period. For the avoidance of doubt, the Parties agree that the Supplier may, upon occurrence of the Appointed Date hereunder, by notice, convey the particulars thereof to the Utility, and shall thereupon be entitled to commence construction on the Project.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 3rd (third) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Power Supply Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility, as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE SUPPLIER

5.1 Obligations of the Supplier

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Supplier shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Power Station, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Supplier shall comply with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Supplier shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4 The Supplier shall install, operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) thereof during each year of the Operation Period (the “**Normative Availability**”).

Explanation:

Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to Contracted Capacity over a period of one hour, after accounting for auxiliary consumption of 6.5%, subject to the approval of Tamil Nadu Electricity Regulatory Commission (“TNERC”), and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Power Station is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, and shall include the deemed availability for and in respect of the events described in Clause 15.8 (the “**Availability**”). For the avoidance of doubt, the Parties agree that Availability shall, during the months when COD or the Transfer Date occurs, be determined with reference to the number of days when the Power Station was in operation, and shall be determined likewise for any single day of operation. The Parties further agree that if the Contracted Capacity of the Power Station is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and despatch of electricity under Applicable Laws and the rules and regulations thereunder.

5.1.5 The Supplier shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Power Station;
- (c) perform and fulfil its obligations under the Financing Agreements;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) procure the possession of the Station Premises and Coal Conveyor Line ROW, and maintain the same;
- (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Supplier's obligations under this Agreement;
- (g) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
- (h) procure that all equipment and facilities comprising the Power Station, including the coal handling system, are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
- (i) support, cooperate with and facilitate the Utility in the implementation of this Agreement;
- (j) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;
- (k) assign, transfer or relinquish the Fuel Supply Agreement for and in respect of Allocated Coal, if any, to the Utility, to the extent allocated or assigned for Contracted Capacity, upon Termination of this Agreement, in accordance with the provisions thereof; and
- (l) omitted
- (m) comply with the directions of the Commission issued from time to time under the Act.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Supplier shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Supplier from its obligations or liability hereunder.
- 5.2.2 The Supplier shall submit to the Utility, the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Utility shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Supplier within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Supplier shall submit to the Utility a true copy thereof, duly attested by a Director of the Supplier, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Utility to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Utility. No review and/ or observation of the Utility and/ or its failure to review and/ or convey its observations on any document shall relieve the Supplier of its obligations and liabilities under this Agreement in any manner nor shall the Utility be liable for the same in any manner whatsoever.

5.3 Obligations relating to Change in Ownership

The Supplier shall not undertake or permit any **Change in Ownership**, except with the prior written approval of the Utility.

5.4 Obligations relating to operation of the Power Station

- 5.4.1 The Supplier shall at all times operate the Power Station in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the RLDC/SLDC may give from time to time in accordance with the provisions of the Act.
- 5.4.2 The Supplier shall enter into and comply with agreements for interconnection of the Power Station to the grid, sub-stations, licensees or consumers, as the case may be, under and in accordance with Applicable Laws.

5.5 Omitted

5.6 Omitted

5.7 Obligations relating to SLDC charges

The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to the SLDC for and in respect of all its supplies to the Utility.

5.8 Obligations relating to taxes

The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this Agreement shall be reimbursed by the Utility upon receipt of particulars thereof.

5.9 Obligations relating to reporting requirements

All information provided by the Supplier to the RLDC and/ SLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by it to the Utility simultaneously.

ARTICLE 6

OBLIGATIONS OF THE UTILITY

6.1 Obligations of the Utility

- 6.1.1 The Utility shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Utility agrees to provide support to the Supplier and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits, including environmental or forest clearances, required from any Government Instrumentality for implementation and operation of the Project;
 - (b) upon written request from the Supplier, provide reasonable assistance to the Supplier in obtaining access to all necessary infrastructure facilities, including water and electricity at rates and on terms no less favorable to the Supplier than those generally available to similar commercial customers receiving substantially equivalent services;
 - (c) make best endeavors to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Power Station;
 - (d) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (e) Omitted
 - (f) support, cooperate with and facilitate the Supplier in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws.
 - (g) All legal, regulatory, and other issues and liabilities associated with the Project, arising from actions taken prior to the signing of this Agreement, shall be the sole responsibility of Utility.
- 6.1.3 Omitted
- 6.1.4 The Utility shall make available, the transmission system required for evacuation of power from the Point of Grid Connection at least 6 (six) months prior to the Scheduled Completion Date of the Unit.
- 6.1.5 The Utility shall complete all the procedures required at its end for execution of the Fuel Supply Agreement for Allocated Coal Linkage.

- 6.1.6 The Utility shall ensure that the Supplier is provided an electrical connection for reasonable construction, commissioning and Start up Power at the Power Station as reasonably requisitioned by the Supplier by written intimation to the Utility. The Utility may kindly settle payment of Start-up power by netting-off the same on a kwh to kwh basis against the power provided by the Supplier to the Utility post COD. For the avoidance of doubt, to illustrate the above in the event the Supplier draws start-up power of 10 kwh at the rate of Rs.4/kwh and tariff quoted is Rs.2/kwh, then the Supplier to net off the same shall supply 20 kwh of power to the Utility.
- 6.1.7 In the event any tax or duty is demanded from the Supplier by a competent authority for the electricity supplied to the Utility, the Supplier shall, within five (5) days of receipt of such demand or show cause notice, as the case may be, inform the Utility in writing attaching copies of the demand or show cause notice. Upon receipt of such communication, within a further period of five (5) days, the Utility shall communicate in writing whether the Utility wishes to contest the imposition of such tax or duty. In case the Utility does not dispute the liability to pay such tax or duty, the Supplier shall forthwith pay the tax or duty and the same shall be reimbursed by the Utility upon receipt of proof of payment from the Supplier. In case the Utility disputes the liability to pay the tax or duty demanded from the Supplier, the Supplier shall avail all recourse available in law against such demand. The cost of the legal proceedings shall be borne by the Utility. If the legal challenge fails and the liability of the Supplier to pay such tax or duty is upheld, then the Supplier shall pay the demanded tax or duty and the Utility shall reimburse the Supplier

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Supplier

The Supplier represents and warrants to the Utility that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its

obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that its promoters together with their Associates, hold not less than 26% (twenty six per cent) of its issued and paid up Equity as on the date of this Agreement, which shall also be no less than 5% (five per cent) of the Total Project Cost;
- (l) the selected Bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the selected Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Utility to enter into this Agreement with {itself/the Supplier} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Fuel Supply Agreement for supply of Allocated Coal, to the extent such Fuel is required for the Contracted Capacity, shall pass to and vest in the Utility on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Utility, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person on the aforesaid Allocated Coal, save and except as expressly provided in this Agreement;
- (o) it has a good and valid right to the Station Premises;
- (p) no representation or warranty by it contained herein or in any other document furnished by it to the Utility or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (q) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Supply Contract or entering into this Agreement or for

influencing or attempting to influence any officer or employee of the Utility in connection therewith;

- (r) all information provided by the selected Bidder in response to the Request for Qualification – DBFOO and Request for Proposal -DBFOO or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (s) all undertakings and obligations of the Supplier arising from the Request for Qualification -DBFOO and Request for Proposal-DBFOO or otherwise shall be binding on the Supplier as if they form part of this Agreement.

7.2 Representations and warranties of the Utility

The Utility represents and warrants to the Supplier that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Utility's ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Laws in all material respects.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Supplier acknowledges that prior to the execution of this Agreement, the Supplier has, after a complete and careful examination, made an independent evaluation of the Request for Qualification-DBFOO, Request for Proposal-DBFOO, Scope of the Project, Specifications and Standards, transmission network, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and any information provided by the Utility or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Utility makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Supplier confirms that it shall have no claim whatsoever against the Utility in this regard.
- 8.1.2 The Supplier acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Utility shall not be liable for the same in any manner whatsoever to the Supplier, and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Utility to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Utility contained in Clause 8.1.1 and shall not in any manner shift to the Utility any risks assumed by the Supplier pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Supplier and the Utility shall not be liable in any manner for such risks or the consequences thereof.

Part III

Development and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 60 (sixty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 30,00,000 (Rupees thirty lakh) per MW in the form set forth in Schedule-D (the “**Performance Security**”). Provided, however, that the Supplier may provide a Performance Security hereunder for a period of 2 (two) years and shall, no later than 60 (sixty) days prior to the expiry thereof, substitute it by a like Performance Security/extend the validity of Performance Security.

9.1.2 Until such time the Performance Security is provided by the Supplier pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Utility shall release the Bid Security to the Supplier.

9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Supplier within a period of 60 (sixty) days from the date of this Agreement, the Utility may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement and the Letter of Assurance shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and this Agreement and the Letter of Assurance, to the extent of Allocated Coal required for the Contracted Capacity, shall be deemed to have been terminated with the consent of the Supplier.

9.2 Appropriation of Performance Security

Upon occurrence of a Supplier Default or failure to meet any Condition Precedent, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Supplier Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Supplier shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Utility shall be entitled to terminate this Agreement in accordance with Article 31. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Supplier shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Supplier Default or to meet any Condition Precedent, and in the event of the Supplier not curing its default or meeting such Condition Precedent within such Cure Period, the Utility shall be entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect until expiry of 3 (three) months after COD and shall be released upon the Performance Guarantee taking effect in accordance with the provisions of Clause 9.4. Until such time the Performance Guarantee comes into effect, the Performance Security shall remain in force and effect, and upon the Performance Guarantee coming into effect pursuant hereto, the Utility shall release the Performance Security to the Supplier.

9.4 Performance Guarantee

- 9.4.1 The Supplier shall, for the performance of its obligations hereunder during the Operation Period, be deemed to provide to the Utility upon occurrence of COD, an irrevocable and unconditional guarantee pursuant to the provisions of this Clause 9.4 (the “**Performance Guarantee**”), for a sum equivalent to the Fixed Charge due and payable by the Utility to the Supplier for Normative Availability in respect of a period of 30 (thirty) days in accordance with the provisions of this Agreement. The Performance Guarantee shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Performance Guarantee by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.
- 9.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Guarantee is not effective or sufficient for meeting the obligations of the Supplier under this Agreement, the Utility may encash the Performance Security and appropriate the proceeds thereof as Damages.

9.5 Appropriation of Performance Guarantee

Upon occurrence of a Supplier Default, the Utility shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Guarantee as Damages for such Supplier Default. For the avoidance of doubt, the Parties expressly agree that upon the Performance Guarantee being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Supplier to the Utility, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Supplier, and the amount so determined shall be appropriated from the Bid Security or Performance Guarantee, as the case may be.

ARTICLE 10

SITE OF THE PROJECT

10.1 The Site

The site of the Power Station shall comprise of: (a) the land required for the power station and associated services as described in Schedule-A, (the “**Station Premises**”) and (b) the land for construction of conveyor system for fuel transportation, if required, (the “**Coal Conveyor Line ROW**”), and in respect of which the right of way shall be procured by the Utility and transferred to the Supplier under and in accordance with this Agreement (collectively, the “**Site**”).

For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land required for the Power Station as set forth in Schedule-A.

10.2 Omitted

10.3 Access rights of the Utility and others

The Supplier shall allow free access to the Site at all times for the authorised representatives of the Utility, Senior Lenders, and the Utility’s Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Power Station and to investigate any matter within their authority, and upon reasonable notice, the Supplier shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

10.4 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Supplier under this Agreement and the Supplier hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Station Premises shall vest in and belong to the Utility or the concerned Government Instrumentality. The Supplier shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Utility forthwith of the discovery thereof and comply with such instructions as the Utility or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Supplier hereunder shall be reimbursed by the Utility. It is also agreed that the Utility shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Supplier to continue its Construction Works with such modifications as may be deemed necessary.

ARTICLE 11

CONSTRUCTION OF THE POWER STATION

11.1 Obligations in respect of construction

The Supplier shall:

- (a) submit to the Utility, time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-E; and
- (b) undertake, do and perform all such acts, deeds and things as may be necessary or required for completion of construction in accordance with this Agreement, Applicable Laws and Applicable Permits.

11.2 Construction of the Power Station

11.2.1 The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. The date falling 48 months from the Appointed Date shall be the scheduled date for completion of the Power Station (the “**Scheduled Completion Date**” or the “**SCOD**”). The Power Station shall be consisting of 1 Unit of 660 MW and the Supplier agrees and undertakes that COD of the Power Station shall be achieved on or before the Scheduled Completion Date.

11.2.2 In the event that the Supplier fails to achieve any Project Milestone (other than SCOD) within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-E, unless such failure has occurred due to Force Majeure or for reasons attributable to the Utility, it shall pay Damages to the Utility in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-E shall be deemed to be modified accordingly; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 11.2.2 shall be refunded by the Utility to the Supplier, but without any interest thereon.

11.2.3 In the event that the Supplier fails to achieve COD on the Scheduled Completion Date, unless such failure has occurred due to Force Majeure or for reasons attributable to the Utility, it shall pay Damages to the Utility in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until COD is achieved provided that in the event the Supplier agrees and undertakes to supply from an alternate source, the whole or part of the entitlement of the Utility from electricity that would have been produced from Contracted Capacity during the period between the Scheduled Completion Date and COD, and on the terms specified in this Agreement, the Damages payable under this Clause 11.2.3 shall be reduced in the same proportion that such supply shall bear to the Contracted Capacity. Provided that in case the Utility refuses to accept power supply from alternate source, the Damages as

provided herein shall not be applicable for the period of such refusal. For the avoidance of doubt, the Parties agree that in the event the Power Station fails to achieve COD within 12 (twelve) months from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Utility shall be entitled to terminate this Agreement.

ARTICLE 12

MONITORING OF CONSTRUCTION

12.1 Quarterly progress reports

During the Construction Period, the Supplier shall, no later than 7 (seven) days after the close of each quarter, furnish to the Utility and the Utility's Engineer a quarterly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Utility's Engineer.

12.2 Inspection

During the Construction Period, the Utility's Engineer shall inspect the Power Station at least once a quarter and make a report of such inspection (the "**Inspection Report**") stating in brief the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Utility and the Supplier within 7 (seven) days of such inspection and upon receipt thereof, the Supplier shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Utility's Engineer shall not relieve or absolve the Supplier of its obligations and liabilities hereunder in any manner whatsoever.

12.3 Delays during construction

If the Supplier does not achieve any of the Project Milestones or the Utility's Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Power Station is not likely to be completed by the Scheduled Completion Date, it shall notify the Supplier to this effect, and the Supplier shall, within 15 (fifteen) days of such notice, by a communication, inform the Utility's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

12.4 Video recording

During the Construction Period, the Supplier shall provide to the Utility for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Utility within 30 (thirty) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 13

COMPLETION CERTIFICATE

13.1 Tests

- 13.1.1 No later than 30 (thirty) days prior to the likely completion of the Power Station, the Supplier shall notify the Utility's Engineer of its intent to subject the Unit to Tests. The date and time of each of the Tests shall be determined by the Supplier, and notified to the Utility and the Utility's Engineer who may designate its representative to witness the Tests, and in the event the Utility's Engineer delays the Tests hereunder, the Utility shall impose exemplary penalties on the Utility's Engineer and shall ensure that Tests are completed in time either by the Utility's Engineer or any substitute thereof.
- 13.1.2 All Tests shall be conducted in accordance with Schedule-F at the cost and expense of the Supplier. The Utility's Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Power Station with Specifications and Standards and if it is reasonably anticipated or determined by the Utility's Engineer during the course of any Test that the performance of the Power Station does not meet the Specifications and Standards, it shall have the right to require the Supplier to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Supplier shall provide to the Utility copies of all Test data including detailed Test results.

13.2 Provisional Certificate

- 13.2.1 The Utility Engineer may issue a provisional certificate of completion substantially in the form set forth in Schedule-G (the "**Provisional Certificate**") if the Tests are successful and the Unit, including its interconnection with the Grid, can be safely and reliably placed in commercial operation in accordance with the provisions of this Clause 13.3.1 though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items (the "**Incomplete Works**").
- 13.2.2 Upon issue of such Provisional Certificate, the provisions of Article 14 shall apply to the Unit specified therein.

13.3 Completion of Incomplete Works

- 13.3.1 All Incomplete Works, including any shortfall in Contracted Capacity or Station Heat Rate, shall be completed or rectified, as the case may be, by the Supplier within 180 (one hundred and eighty) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Utility or due to Force Majeure, the Utility shall be entitled to recover Damages from the Supplier to be calculated and paid for each day of delay until all items are completed, at the lower of, (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of

completing such items as estimated by the Utility's Engineer.

- 13.3.2 Failure of the Supplier to complete all the Incomplete Works within the time set forth in Clause 13.3.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Utility, shall entitle the Utility to terminate this Agreement.

13.4 Synchronisation

- 13.4.1 At least 30 (thirty) days prior to the likely synchronisation of the Power Station to the Grid, the Supplier shall notify the Utility and the RLDC or SLDC, as the case may be, of its intent to undertake such synchronisation.
- 13.4.2 Subject to the provisions of Clause 13.4.1, the Power Station may be synchronised with the Grid when it meets all the conditions specified in the Grid Code and Applicable Laws.
- 13.4.3 The Utility shall accept and receive all infirm power generated during the testing and commissioning of the Power Station. The Supplier shall be paid infirm power charges as per the guidelines of the Commission, as amended from time to time, applicable for the year in which the Power Station is synchronized or commissioned.

13.5 Completion Certificate

- 13.5.1 Upon completion of Construction Works, and the Utility Engineer determining the Tests to be successful in accordance with the provisions of this Agreement, it shall forthwith issue to the Utility a certificate substantially in the form set forth in Schedule-G (the "**Completion Certificate**").
- 13.5.2 Tests in respect of Station Heat Rate shall be deemed to be successful only if the Tests establish that the Station Heat Rate is equal to or lower than the rate specified in the Specifications and Standards. Provided, however, that in the event the Tests establish that the actual Station Heat Rate exceeds the specified Station Heat Rate by upto 2% (two per cent) thereof, the Tests shall be deemed to be successful as if the Power Station has achieved the specified Station Heat Rate.

13.6 Phased Completion of Power Station

Omitted

ARTICLE 14

ENTRY INTO COMMERCIAL SERVICE

14.1 Commercial Operation Date (COD)

- 14.1.1 The Power Station thereof, as the case may be, shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13. The commercial operation date of the Power Station, as the case may be, shall be the date on which the Power Station is deemed fit for generating electricity and supplying it to the Point of Grid Connection upon issuance of such Completion Certificate or the Provisional Certificate (the “COD”). The Power Station thereof shall enter into commercial service on COD whereupon the Supplier shall be entitled to demand and collect the Tariff in accordance with the provisions of Article 21. For the avoidance of doubt, the Parties expressly agree that if the Power Station thereof, as the case may be, is ready for COD and Supplier has given due notice to the Utility but COD is delayed due to non-availability of transmission system or non-compliance of obligations attributed to the Utility as per Clause 6.1.2 (b) & (g), 6.1.4, and 6.1.5, the Utility shall pay to the Supplier from the Scheduled Completion Date or the date notified by the Supplier for COD, whichever is later, an amount equal to 100% (hundred percent) of the Fixed Charges based on Normative Availability as Damages for a period till the time transmission system is made available and COD is achieved. The Parties further agree that for determination of Tariff under Article 21, COD of the Unit shall be deemed to be the COD of the Power Station.
- 14.1.2 In the event COD is achieved prior to the Scheduled Completion Date, the Fixed Charge due and payable to the Supplier for the period prior to the Scheduled Completion Date shall be 100% (hundred per cent) of the Base Fixed Charge specified in Clause 21.2.1. Provided, however, that no payment on account of Fixed Charge hereunder shall be due or payable for any period prior to [365 (three hundred and sixty five)] days from the Scheduled Completion Date. Provided further that for any energy despatched to the Utility during such period, the Fuel Charge shall be payable in accordance with Article 22 of this Agreement.
- 14.1.3 Notwithstanding anything to the contrary contained herein or elsewhere in this Agreement, in the event that the COD of the project is achieved on or before the Scheduled Completion Date as specified in Article 11.2.1, then any penalty / damages imposed on or paid by the Supplier, if any, in terms Article 4.3 or 20.1.1 shall be refunded back to the Supplier.

14.2 Omitted

14.3 Omitted

ARTICLE 15

OPERATION AND MAINTENANCE

15.1 O&M obligations of the Supplier

15.1.1 During the Operation Period, the Supplier shall operate and maintain the Power Station in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Power Station to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Supplier hereunder shall include:

- (a) ensuring safe, smooth and uninterrupted supply of electricity from the Power Station, including prevention of loss or damage thereto, during normal operating conditions;
- (b) undertaking operation and maintenance of the Power Station in an efficient, coordinated and economical manner, in compliance with the Grid Code, Central Electricity Authority (Grid Standards) Regulations, 2010, Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and Applicable Laws;
- (c) procuring that the Availability of the Power Station is not less than the Normative Availability;
- (d) minimising disruption to operation of the Power Station in the event of accidents or other incidents affecting the safety and operation of the Power Station by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) operation and maintenance of all communication, control and administrative systems necessary for efficient operation of the Power Station and for providing safe and uninterrupted supply of electricity to the Utility;
- (f) maintaining a public relations unit to interface with and attend to suggestions from Project affected persons, government agencies, media and other agencies;
- (g) complying with Safety Requirements;
- (h) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice; and
- (i) maintaining reliability in operating the Power Station.

15.1.2 If the Supplier fails to comply with any directions issued by the Commission, the RLDC or the SLDC, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Supplier, and shall not be claimed from the Utility. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.

15.2 Maintenance Requirements

The Supplier shall procure that at all times during the Operation Period, the Power Station conforms to the maintenance requirements set forth in Schedule-H and the Maintenance Manual (the “**Maintenance Requirements**”).

15.3 Maintenance Manual

15.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Supplier shall evolve an operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Power Station in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Utility. The Maintenance Manual shall be revised and updated once every 3 (three) years.

15.3.2 Without prejudice to the provision of Clause 15.3.1, the Maintenance Manual shall, in particular, provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

15.4 Maintenance Programme

15.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Supplier shall provide to the Utility its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”), to be carried out only during June - August months, to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

15.4.2 Any maintenance carried out by the Supplier as per the Maintenance Programme under this Clause 15.4 and as notified to the Utility under the provisions of Clause 21.5.4 shall be deemed to be scheduled maintenance (the “**Scheduled Maintenance**”). For the avoidance of doubt, any closure, suspension or reduction of Contracted Capacity arising out of Scheduled Maintenance shall be deemed as Non-Availability of Contracted Capacity.

15.5 Safety, breakdowns and accidents

The Supplier shall ensure safe conditions at the Power Station, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

15.6 De-commissioning due to Emergency or Forced Outage

15.6.1 If, in the reasonable opinion of the Supplier, there exists an Emergency or Forced Outage, as the case may be, which warrants de-commissioning or shut down of

the whole or any part of the Power Station, the Supplier shall be entitled to de-commission or shut down the whole or any part of the Power Station for so long as such Emergency or Forced Outage and the consequences thereof warrant; provided that such de-commissioning or shut down and particulars thereof shall be notified by the Supplier to the Utility, the RLDC and the SLDC without any delay, and the Supplier shall diligently carry out and abide by any reasonable directions that the Utility, the RLDC or the SLDC may give for dealing with such Emergency or Forced Outage.

- 15.6.2 The Supplier shall re-commission the Power Station or any part thereof as quickly as practicable after the circumstances leading to its de-commissioning or shut down have ceased to exist or have so abated as to enable the Supplier to re-commission the Power Station and shall notify the Utility of the same forthwith.

15.7 Omitted

15.8 Unscheduled Maintenance

Any maintenance or repair of the Power Station not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, the Parties agree that any de-commissioning or shut down of the whole or any part of the Power Station under the provisions of Clause 15.6 shall be deemed to be Unscheduled Maintenance. It is further agreed that any reduction of generating capacity arising out of Unscheduled Maintenance shall be deemed as Non-Availability of Contracted Capacity. Provided, however, that the loss or reduction in Availability shall be of no greater scope and of no longer duration than is reasonably required by the aforesaid events.

15.9 Omitted

15.10 Restoration of loss or damage to the Power Station

Save and except as otherwise expressly provided in this Agreement, in the event that the Power Station or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the Supplier shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Power Station conforms to the provisions of this Agreement.

15.11 Modifications to the Power Station

The Supplier shall not carry out any material modifications to the Power Station save and except where such modifications are necessary for the Power Station to operate in conformity with the Specifications and Standards, Maintenance Requirements and Applicable Laws; provided that the Supplier shall notify the Utility of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Utility may make within 15 (fifteen) days of receiving the Supplier’s proposal.

15.12 Excuse from performance of obligations

The Supplier shall not be considered in breach of its obligations under this Agreement if the Non-Availability of the whole or any part of the Contracted Capacity of the Power Station is on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safety of the Power Station except when unsafe conditions occurred because of failure of the Supplier to perform its obligations under this Agreement; or
- (c) compliance with a request from the Utility or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Power Station:

Provided, that any such Non-Availability and particulars thereof shall be notified by the Supplier to the Utility and without any delay;

Provided further that the Supplier shall ensure and procure Availability of all unaffected parts of the Contracted Capacity of the Power Station, provided they can be operated safely.

15.13 Safety Requirements

The Supplier shall at all times comply with the provisions of this Agreement, Applicable Laws and Applicable Permits for securing the safety of the Power Station and the persons present in the premises thereof. In particular, the Supplier shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Power Station (the “**Safety Requirements**”).

ARTICLE 16

MONITORING OF OPERATION AND MAINTENANCE

16.1 Monthly status reports

During Operation Period, the Supplier shall, no later than 7 (seven) days after the close of each month, furnish to the Utility a monthly report stating in reasonable detail the condition of the Power Station including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Utility. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

16.2 Omitted

16.3 Omitted

ARTICLE 17

KEY PERFORMANCE INDICATORS

17.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Supplier shall operate the Contracted Capacity of the Power Station such that it achieves or exceeds the performance indicators specified in this Article 17 (the “**Key Performance Indicators**”)

17.2 Availability

The Supplier shall procure that during the Operation Period, the Availability of Contracted Capacity of the Power Station is not less than the Normative Availability and Incentives and Damages in relation to Availability shall be payable or recoverable, as the case may be, by the Utility in accordance with the provisions of Article 21.

17.3 Monthly status report

During Operation Period, the Supplier shall, no later than 7 (seven) days after the close of each month, furnish a monthly report to the Utility stating in reasonable detail the compliance with the Key Performance Indicators specified in this Article 17 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Power Station. The monthly report shall include a quantification of the Damages calculated in accordance with the provisions of this Agreement.

17.4 ISO certification

17.4.1 The Supplier shall, within 12 (twelve) months from COD, achieve and thereafter maintain throughout the Contract Period, **ISO 18001:2006** and **ISO 9001:2000** certifications or a substitute thereof for all the facilities at the Power Station, and shall provide a certified copy thereof to the Utility forthwith.

17.4.2 In the event of default in obtaining the certifications specified in Clause 17.4.1, the Supplier shall, within 15 (fifteen) days thereof, submit to the Utility an action plan that sets out the actions proposed to be taken by the Supplier for rectifying its deficiencies and obtaining such certifications.

17.4.3 If the period of default in obtaining the ISO certifications under this Clause 17.4 shall exceed a continuous period of 3 (three) months, the Supplier shall pay Damages to the Utility in an amount equal to 0.5% (zero point five per cent) of the Average Daily Fixed Charge for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.

ARTICLE 18

ALLOCATION OF CAPACITY

18.1 Installed Capacity

The Supplier acknowledges and agrees that it shall set up and operate the Power Station with an installed capacity of 660 MW (the “**Installed Capacity**”).

18.2 Contracted Capacity

Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of 617 MW, at the Point of Grid Connection to the Utility as the capacity contracted hereunder (the “**Contracted Capacity**”) and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.

18.3 Omitted

18.4 Omitted

18.5 Sale of unutilised Contracted Capacity

18.5.1 In the event that any part of the entitlement of the Utility to the Contracted Capacity is not utilised by the Utility or its nominees, and such unutilized Contracted Capacity, is utilised for production of electricity and sale thereof to any other Buyer(s). The Fixed Charge due and payable for and in respect of such Contracted Capacity shall be in line with the provisions of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time. Provided that the use of Allocated Coal, if any, for production of electricity from such Capacity shall be governed by the provisions of Clause 22.6. For the avoidance of doubt, the Parties agree that supply of electricity to a nominee of the Utility shall be subject to provision of adequate payment security either by the nominee or by the Utility. The Parties further agree that in the event any such Contracted Capacity remains unsold hereunder, the Fixed Charge in respect thereof shall be due and payable by the Utility to the Supplier.

18.5.2 Omitted.

18.5.3 Omitted.

18.6 Substitute Supply

In the event the Availability of the Power Station is reduced on account of Scheduled Maintenance, Unscheduled Maintenance or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Fuel Charge, be deemed to be supplied under and in accordance with

the provisions of this Agreement. Provided that in case such consent is denied by the Utility, the Utility shall be liable for payment of Fixed Charge to the Supplier in proportion to the substitute supply made available by the Supplier.

18.7 Omitted

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ARTICLE 19

UTILITY'S ENGINEER

19.1 Appointment of Utility's Engineer

19.1.1 The Utility shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-I, to be the Utility's consultant under this Agreement (the "**Utility's Engineer**"). The appointment shall be made no later than 180 (one hundred and eighty) days from the date of this Agreement and shall be for a period upto COD.

19.1.2 Omitted

19.2 Duties and functions

19.2.1 The Utility's Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-I.

19.2.2 The Utility's Engineer shall submit regular periodic reports (at least once every quarter) to the Utility in respect of its duties and functions set forth in Schedule-I.

19.2.3 A true copy of all communications sent by the Utility to the Utility's Engineer and by the Utility's Engineer to the Utility shall be sent forthwith by the Utility's Engineer to the Supplier.

19.2.4 A true copy of all communications sent by the Utility's Engineer to the Supplier and by the Supplier to the Utility's Engineer shall be sent forthwith by the Utility's Engineer to the Utility.

19.3 Remuneration

The remuneration, cost and expenses of the Utility's Engineer shall be paid by the Utility which appoints the Utility's Engineer.

19.4 Termination of appointment

The Utility may, in its discretion, terminate the appointment of the Utility's Engineer at any time, but only after appointment of another Utility's Engineer in accordance with Clause 19.1.

19.5 Authorised signatories

The Utility shall require the Utility's Engineer to designate and notify to the Utility and the Supplier up to 2 (two) persons employed in its firm to sign for and on behalf of the Utility's Engineer, and any communication or document required to be signed by the Utility's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Utility's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

19.6 Omitted

19.7 Interim arrangement

In the event that the Utility does not appoint a Utility's Engineer, or the Utility's Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Utility may, in the interim, designate and authorise any person to discharge the functions of the Utility's Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Utility's Engineer, and such functions shall be discharged as and when an Utility's Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 19.7 shall in any manner restrict the rights of the Utility to enforce compliance of the provisions of this Agreement.

Part IV

Financial Covenants

ARTICLE 20

FINANCIAL CLOSE

20.1 Financial Close

- 20.1.1 The Supplier hereby agrees and undertakes that it shall achieve Financial Close within 12 (twelve) months from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [3 (Three)] months, and subject to Article 4.1.3, the Supplier shall make payment of Damages to the Utility in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 12 (twelve) months shall be granted for a period not exceeding 3 (three) months only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Utility in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder shall be in addition to the Damages, due and payable under the provisions of Clause 4.3.
- 20.1.2 The Supplier shall, upon occurrence of Financial Close, notify the Utility forthwith, and shall have provided to the Utility 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Supplier, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

20.2 Termination due to failure to achieve Financial Close

- 20.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 28.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 20.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of, the Supplier, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 20.2.1 shall not apply.
- 20.2.2 Upon Termination under Clause 20.2.1, the Utility shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred due to Force Majeure or as a result of the Utility being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, release Performance Security, forthwith along with the Damages due and payable under Clause 4.2.

ARTICLE 21

TARIFF

21.1 Tariff

21.1.1 The Utility shall pay, to the Supplier, tariff comprising the sum of Fixed Charge and Fuel Charge payable by the Utility to the Supplier for Availability and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the “**Tariff**”).

21.1.2 As a part of the Tariff, the Utility shall pay to the Supplier an amount, determined in accordance with the provisions of this Article 21, as the Fixed Charge for Availability of the Power Station to the extent of Normative Availability thereof (the “**Fixed Charge**”).

21.2 Base Fixed Charge

21.2.1 The Parties agree that the fixed charge shall, in accordance with the offer of the Supplier for the Base Year, be Rs. (Rupees ...)£ per kWh, to which the amount, if any, determined in accordance with the provisions of Clauses 21.2.2 or 21.2.3, as the case may be, shall be added or deducted, as the case may be, and the sum thereof (the “**Initial Fixed Charge**”) shall be revised annually in accordance with the provisions of Clause 21.2.4 to determine the base fixed charge for the relevant Accounting Year (the “**Base Fixed Charge**”).

21.2.2 In the event the Completion Certificate specifies a Station Heat Rate that is lower than the Station Heat Rate specified in Schedule-C, the Initial Fixed Charge shall be increased such that for every improvement of 1% (one per cent) as compared to the Station Heat Rate specified in Schedule-C, the amount specified in Clause 21.2.1 shall be increased by 1.5% (one point five per cent) thereof.

21.2.3 In the event the Completion Certificate specified a Station Heat Rate that is higher than the Station Heat Rate specified in Schedule-C the Initial Fixed Charge shall be decreased such that for every increase of 1% (one per cent) as compared to the Station Heat Rate specified in Schedule-C, the amount specified in Clause 21.2.1 shall be decreased by 2% (two per cent) thereof.

£ This amount shall be the amount specified in the Bid. In case of Fuel sourced from Coal Mine/Blocks, the amount shall be the lower of the amount specified . the Bid and ceiling amount provided by the Utility.

- 21.2.4 The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which COD occurs, and for each subsequent Accounting Year, the applicable Base Fixed Charge shall be determined by decreasing the Base Fixed Charge for the immediately preceding Accounting Year by 2% (two per cent) thereof. For the avoidance of doubt and by way of illustration, the Base Fixed Charge for the first Accounting Year in which COD occurs shall be the Initial Fixed Charge, and for the second and third Accounting Years subsequent to the Accounting Year in which COD occurs, shall be a sum equal to [98% (ninety eight per cent) and 96.04% (ninety six point zero four per cent)] respectively of the Initial Fixed Charge. It is expressly clarified that the above specified 2% decrease in Base Fixed Charge shall be applicable from the subsequent Accounting Year in which COD of the Power Station occurs.

21.3 Indexed Fixed Charge

The Base Fixed Charge determined for each Accounting Year in accordance with the provisions of Clause 21.2 shall be revised annually to reflect 30% (thirty per cent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken (the “**Indexed Fixed Charge**”). For the avoidance of doubt and by way of illustration, if (a) the Bid Date occurs in February 2015; (b) COD occurs in May 2019; and (c) WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Indexed Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be 106% (one hundred and six per cent) of the Base Fixed Charge for that Accounting Year.

21.4 Computation of Fixed Charge

- 21.4.1 Subject to the provisions of this Clause 21.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 21.3 shall be the Fixed Charge payable for Cumulative Availability up to each month of the relevant Accounting Year.

Notwithstanding anything to the contrary contained herein or elsewhere in this Agreement, the payment for Fixed Charge in any Accounting Year shall be computed and made on the basis of Cumulative Availability.

- 21.4.2 Upon occurrence of a shortfall in the Minimum Fuel Stock, Availability shall be deemed to be reduced in accordance with the provisions of Clause 21.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 70% (seventy per cent) of the Non-Availability hereunder. For the avoidance of doubt, the Parties expressly agree that if Fuel Shortage is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. By way of illustration, the Parties agree that in the event the Non-Availability arising on account of shortfall in supply of Fuel is determined to be 50% (fifty per cent), the Supplier shall, with respect to the Non-Availability arising on account thereof in accordance with the provisions of Clause 21.5.2, be entitled to a Fixed Charge as if the Availability is equivalent to 70% (seventy per cent) of such

Non-Availability. For the avoidance of doubt, the Parties agree that the Supplier shall not be liable to pay the Damages specified in Clause 21.6.2 if Non-Availability shall arise as referred to in this Clause 21.4.2.

- 21.4.3 In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in transmission from the Point of Grid Connection, Availability shall be deemed to be reduced accordingly and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 100% (hundred per cent) of the Non-Availability hereunder. Provided, however, that the Supplier may, in its sole discretion, Despatch the Power Station to the extent of full or part Non-Availability hereunder for supply to other Distribution Licensees or Buyers, as the case may be, and to the extent of such Despatch, the Utility shall not be liable to payment of any Fixed Charge due and payable in accordance with the provisions of this Clause 21.4.3. Provided further that the provisions of this Agreement for and in respect of Tariff and Revenue Share shall apply to such supply. For the avoidance of doubt, the Parties expressly agree that if such deficiency in transmission is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder.
- 21.4.4 The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (Eighty Five per cent) computed in terms of kWh as per Clause 5.1.4 with reference to the entitlement of the Utility in Contracted Capacity (the “**Capacity Charge**”). Provided, however, that in the event the Cumulative availability of the Power Station up to the month is beyond such 85% (Eighty Five per cent), Incentive shall be payable in accordance with the provisions of Clause 21.6.1.
- 21.4.5 Pursuant to the provisions of Clause 21.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof and in the event of Despatch of the Power to the Utility in excess of 85% (eighty five per cent) of Contracted Capacity, such excess dispatch shall be eligible only for payment of Fuel Charge, save and except the payment of Incentive due under the provisions of Clause 21.4.4.

21.5 Declaration of Availability

- 21.5.1 Unless otherwise notified by the Supplier, the declared Availability shall be deemed to be 100% (one hundred per cent) thereof at all times.
- 21.5.2 In the event Fuel stocks decline below the Minimum Fuel Stock, Availability shall be deemed to be reduced proportionate to the reduction in Minimum Fuel Stock, and shall be deemed as Non-Availability on account of Fuel Shortage. Provided that the Utility may, in its sole discretion, Despatch the Power Station for the full or part Non-Availability hereunder and to the extent of such Despatch, the Utility shall pay the full Fixed Charge due and payable in accordance with this Agreement. For the avoidance of doubt and by way of illustration, if the actual stock of Fuel is 80% (eighty per cent) of the Minimum Fuel Stock at the commencement of any day, the

Availability for that day shall be deemed to be 80% (eighty per cent) and the Non-Availability on account of Fuel Shortage shall be notified by the Supplier to the Utility accordingly.

21.5.3 Omitted.

21.5.4 The Supplier shall notify, no later than 15 (fifteen) days prior to the commencement of a month, its maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Supplier shall, , notify any modifications of its maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty eight) hours prior to its occurrence.

21.5.5 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Contracted Capacity or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the “**Mis-declaration**”) shall be deemed to have occurred. In such an event, the Availability for the relevant month shall, for the purposes of payment of Fixed Charge, be deemed to be reduced by the same proportion that Availability bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Supplier under this Agreement.

21.5.6 Notwithstanding the provisions of Clause 21.5.5, any reduction in Availability arising out of de-commissioning due to Emergency or a Force Majeure Event or any cause specified in Clause 15.6 shall not be deemed to be Mis-declaration if the Supplier shall have notified the Utility in accordance with the provisions of Clauses 15.6 or 28.5, as the case may be.

21.6 Incentive and Damages

21.6.1 In the event that the Cumulative Availability in any month exceeds the Normative Availability, the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50 % (fifty per cent) of the Fixed Charge for Cumulative Availability in excess of Normative Availability.

21.6.2 In the event that Cumulative Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, any reduction below the Cumulative Availability of 80% (eighty per cent) shall, subject to the provisions of Clause 21.7, be multiplied by a factor of 0.25 (zero point two five) to determine the Damages payable for such reduction in Cumulative Availability. For the avoidance of doubt, the Parties agree that the Damages to be deducted for any reduction below the aforesaid Cumulative Availability of 80% (eighty per cent) shall be 25% (twenty five per cent) of the Fixed Charge which is reduced on account of shortfall in Cumulative Availability below such 80% (eighty per cent).

21.6.3 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be

determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

21.7 Scheduled Maintenance

The period of closure for Scheduled Maintenance shall be deemed as Non-Availability in accordance with the provisions of Clause 15.4.2 and no Fixed Charge shall be due or payable for and in respect of such Non-Availability. For the avoidance of doubt, the Parties agree that the Damages specified in Clause 21.6.2 shall not apply for and in respect of the Non-Availability hereunder.

21.8 Fuel Charge

The Utility shall pay to the Supplier, as part of Tariff, a Fuel Charge to be determined in accordance with the provisions of Article 22.

21.9 Taxes and duties

- 21.9.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 21.9.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 21.9.2, in accordance with Applicable Laws.
- 21.9.2 The Tariff and Incentives payable by the Utility under this Article 21 shall be exclusive of Taxes and Duties any levied on the electricity supplied to the Utility and shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particulars along with documentary evidences by the Supplier.
- 21.9.3 Any payment to be made by the Utility shall be subject to any tax deduction at source, if required to be made by the Utility as per Applicable Laws.

21.10 Billing and Payment

- 21.10.1 Commencing from the month following the month in which COD occurs, the Supplier shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Utility, an invoice in the agreed form (the “**Monthly Invoice**”) signed by the authorised signatory of the Supplier setting out the computation of the Fixed Charge and Fuel Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement.
- 21.10.2 The Supplier shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed, comprising evidence of communications regarding the extent of Non-Availability from time to time; (c) official documents in support of the variation in WPI as specified in

Clause 21.3; (d) detailed calculations of the Fixed Charge for Availability in accordance with this Article 21; (e) detailed calculations of the Fuel Charge, in respect of the electricity dispatched, computed in accordance with Article 22 along with all supporting documents including invoices of Coal India Ltd/or any of its subsidiaries, invoices of Indian Railways, invoices for road transportation, invoices related to shipping costs etc.; (f) detailed calculations of the Incentives and/or Damages in accordance with Clause 21.6; (g) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (h) details of the Fixed Charge to be adjusted by the Supplier in respect of sale of power to Buyers, if any; (i) details in respect of Damages or Incentives payable in respect of Key Performance Indicators in accordance with the provisions of Article 17; and (j) the net amount payable under the Monthly Invoice.

21.10.3 The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1, Supplementary Invoice in accordance with Clause 21.13, and Provisional Monthly Invoice in accordance with Clause 21.14 (the “**Payment Due Date**”), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, including 50% (Fifty percent) of any amounts which it determines as not payable or disputed (the “**Disputed Amounts**”). The balance 50% (Fifty percent) of the Disputed Amounts shall be paid in accordance with the Clause 21.11.2.

21.10.4 All Damages and any other amounts due and payable by the Supplier in accordance with the provisions of this Agreement may be deducted from the Tariff due and payable to the Supplier and in the event the deductions hereunder exceed the Tariff in that month, the balance remaining shall be deducted from the Tariff due and payable to the Supplier for the immediately following month.

21.11 Disputed Amounts

21.11.1 The Utility shall, within 20 (twenty) days of receiving an invoice, notify the Supplier of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Supplier shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Utility may, if necessary, meet a representative of the Supplier for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Utility shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

21.11.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 38.4.

21.12 Discount for early payment

The Parties expressly agree that in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the Monthly Invoice/Provisional Monthly Invoice thereof, it shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.

21.13 Supplementary Invoice

21.13.1 Either Party may raise a bill on the other Party ("**Supplementary Invoice**") for payment on account of:

- (i) Adjustments required by State/Regional Energy Account (if applicable); and/or
- (ii) Change in Law as provided in Article 34

And such Supplementary Invoice shall be paid by the other Party.

21.13.2 The Utility or the Supplier, as the case may be, shall pay the amount payable under the Supplementary Invoice on or before the Payment Due Date.

21.13.3 For the Payment of the Supplementary Invoice, prior to Payment Due Date, the Utility shall be entitled to deduct 1% (one percent) of the amount stated in the relevant Supplementary Invoice by way of discount for early payment. However, no rebate shall be applicable on Supplementary Invoices raised on account of Change in Law relating to Taxes.

21.13.4 In the event of delay in payment of Supplementary Invoice by either Party in accordance with Clause 21.10.3 above, interest for the period of delay shall be payable as per Clause 38.4.

21.14 Appropriation of Payments

21.14.1 All payments made by the Utility shall be appropriated and adjusted, except any Disputed Amounts, by the Supplier in the following order of priority:

- i. towards amounts as per Clause 38.4
- ii. towards payment mandated under Change in Law as per Article 34
- iii. towards the current Monthly Invoice(s), if any;

21.14.2 All the bills payable by the Utility to Supplier for the energy procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Utility shall be adjusted first against the oldest bill and then to the second oldest bill and so on, so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for.

21.15 Late Payment Surcharge

The Parties hereto agree that in case the payment of Monthly Invoice / Supplementary Invoice / Provisional Monthly Invoice is delayed beyond the Payment Due Date, the provisions of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time, shall be applicable.

ARTICLE 22

FUEL CHARGE

22.1 Station Heat Rate

- 22.1.1 The heat energy input, in kCal, required for generation and supply of 1 (one) kWh of electricity at the Point of Grid Connection, after accounting for auxiliary consumption and transmission losses upto the Point of Grid Connection, if any, as determined by Tests and specified in the Provisional Certificate or Completion Certificate, as the case may be, shall be the net station heat rate of the Power Station (the “**Station Heat Rate**” or “**SHR**”). Provided that the SHR shall be adjusted from time to time in accordance with the provisions of Clause 24.4, to account for any reduction in Despatch. Provided further that the aforesaid SHR shall be deemed to be increased by 0.15% (zero point one five per cent) per annum on each successive anniversary of COD and the number so arrived at shall be the applicable SHR for that year. For the avoidance of doubt and by way of illustration, the Parties expressly agree that if Tests determine that the Station Heat Rate at the Point of Grid Connection is say 2,300 kCal per kWh, it shall be assumed that such Station Heat Rate has been derived after accounting for auxiliary consumption and transmission losses upto the Point of Grid Connection, if any.

22.2 Fuel Charge

- 22.2.1 The Utility shall pay to the Supplier, for and in respect of the Fuel utilised for generation of a kWh of electricity for supply thereof to the Utility, a fuel charge determined from time to time in accordance with the provisions of this Article 22 and expressed in Rupees per kWh (the “**Fuel Charge**”).

The Supplier has in its bid quoted the Fuel Charge of Rs. and paise....(Rupees and paise) per kWh comprising (a) Rs. . . . and paise(Rupees and paise) per kWh on account of cost of Fuel, (b) Rs. . . . And paise (Rupees and paise . . .) per kWh on account of freight payable to Indian Railways, (c) Rs. . . . And paise (Rupees and paise . . .) per kWh on account of ocean freight charges (d) Rs... and paisa(Rupees and paise . . .) on account of inland handling of domestic Fuel at loading and unloading ports. The Fuel Charge quoted for Allocated Coal by the Supplier is based on the parameters comprising of (i) weighted average of “As Delivered Price” of coal of Rs. ____ per Tonne at the loading point of the mine to be sourced from the mines as per Part B of Annex-1 Schedule A, as amended from time to time; (ii) Weighted average GCV of Coal of ____ kCal/kg as delivered at the loading point of the mines as per Part B of Annex-1 Schedule A, as amended from time to time; (iii) weighted average freight of Rs. ____ per Tonne (inclusive of applicable taxes) payable to Indian Railways for transportation (applicable for full rake load); (iv) in case of transportation through ocean route, indicative weighted average distance of ____ kilometer from loading point of Mines to the loading port and distance of ____ kilometer from unloading port

to Plant location; (v) in case of non-ocean route, indicative weighted average distance of ____ kilometer from loading point of mine to plant; (vi) weighted average ocean freight of Rs.and paise(Rupees and paise) per kWh for transportation of domestic Fuel; (vii) Inland handling of domestic Fuel at loading and unloading ports Rs.and paise(Rupees and paise) per kWh.

- A. The Parties further agree that the Fuel Charge as on the Bid Date shall be deemed to be Rs. _____ (Rupees _____) per kWh, which represents the lower of the Bid submitted by the Supplier and the amount determined above as on the Bid Date. Any error or misrepresentation herein, as and when detected, shall entitle the Utility to reduce the Fuel Charge correspondingly and recover any excess payments made in the past along with interest at the rate specified in Clause 38.4.
- B. The transportation of coal from the designated coal mine (Point A) to the Power Station (Point D) shall be undertaken through the approved multimodal route comprising:
 - Rail transport from the mine loading point _____ [*Insert mine block as per the coal linkage arranged by the Utility*] (“**Point A**”) to the designated loading port _____ [*Insert the designated loading port as mentioned by the Supplier in the Bid*] (“**Point B**”),
 - Ocean transport from Point B to the designated unloading port, Kamarajar Port Limited, (“**Point C**”), and
 - Conveyor belt transport from Point C to the Power Station at (“**Point D**”) (collectively, the "**Approved Route**").

Any deviation from the Approved Route, including any change in the mode of transport, or in the location of any of the interconnection points (i.e., Point A, Point B, Point C, or Point D) shall require prior written approval of the Authority.

The Utility acknowledges and agrees that it shall not unreasonably withhold, delay, or condition its approval for any such deviation.

22.2.2 The Parties expressly acknowledge and agree that Fuel Charge after COD shall be computed by dividing the product of SHR (as determined in Clause 22.1.1) and the weighted average Landed Fuel Cost per kilogram of Fuel (as determined in Clause 22.2.3, 22.2.4 (i) and 22.2.4 (ii), 22.2.4 (iii), 22.2.6, 22.2.9 by the Average GCV per kilogram of coal (as determined in Clause 22.3). The Parties further agree that the Fuel Charge for electricity generated from Allocated Coal and the Fuel, if any, from AFSA shall be determined separately, and unless specified to the contrary, Fuel Charge shall be deemed to be based on Allocated Coal.

Explanation:

Landed cost of Fuel for Allocated Coal shall be the sum of (i) weighted average "As Delivered Price" of coal, in Rs. per kilogram at the loading point of the mine to be sourced from the mines as per Part B of Annex-1 Schedule A, as amended from time to time, which is due and payable by the Supplier for procuring Fuel in accordance with the provisions of Clause 22.2.3, (ii) weighted average freight (including applicable taxes) payable for transportation of Fuel as specified in Clause 22.2.4 and Clause 22.2.9, if any, as specified in Clause 22.2.6 (the "**Landed Fuel Cost**"). Provided, however, that the Landed Fuel Cost shall in no case exceed the actual cost incurred by the Supplier.

22.2.3 The cost of Fuel for Allocated Coal forming part of the Landed Fuel Cost shall be determined in accordance with the following explanation:

Explanation:

(a) For the Allocated Coal supplied by CIL/its subsidiaries through Letter of Assurance/ FSA arranged by the Utility, the price of Fuel shall be deemed to be the lower of, (i) 101% of the weighted average As Delivered Price of coal for the relevant month at the loading point of mines (Part B of Annex-1 Schedule A), as amended from time to time, adjusted by the proportion which the weighted average "As Delivered Price" considered by the Bidder as specified at Clause 22.2.1) and (ii) actual price of coal, and in case of Additional Fuel Supply Arrangement for domestic Fuel, the price thereof shall be the lower of, (i) the relevant price of similar Fuel sold by CIL through e-auction; and (ii) actual cost of procurement of Fuel.

22.2.4 The total cost of transportation of domestic Fuel, forming part of the Landed Fuel Cost shall be computed as follow:

- i. Cost of transportation of domestic Fuel by railway shall be the lower of, (a) 110% (one hundred and ten per cent) of the weighted freight payable to the Indian Railways for transportation by rail and taxes and duties payable on such freight applicable during the relevant month adjusted by the proportion which the weighted average freight considered by the Bidder at Clause 22.2.1 , and (b) the actual cost of transportation.
- ii. The road transportation of Fuel at Power Station End or Fuel source end will be pass through.
- iii. In respect of transportation of Fuel by ocean, the transportation Ocean Freight shall be calculated as follow:

Accounting Year after the Bid Due date:

$$OF_n = QOF_n * q(OT)$$

At the end of the first month in the accounting year in which COD occurs:

$$OF_{n+1} = QF_n * p(OT)$$

QOF_n is the Quoted Ocean Freight for transportation of domestic Fuel in Rs./kWh at the time of the Bid.

q(OT) is the Annual Escalation Index for transportation of imported coal as per Escalation Index computation explained below (expressed as a number)

p(OT) is the Monthly Escalation Index for transportation of imported coal as per Escalation Index computation explained below at the beginning of the Month “m” (expressed as a number)

Escalation Index

The index (“Escalation Index”) to be applied for escalation of transportation of coal, inland handling of coal shall be computed by assuming that as on the Bid Date, the value of such Escalation Index is 100. Thereafter for each accounting year after the Bid Date, the value of the Escalation Index shall be computed by applying the annual escalation rate specified by CERC for payment by using (i) “Escalation rate for transportation of imported coal” for the purpose of escalating the cost of coal transportation on Ocean Freight; and (ii) “Escalation rates for inland transportation charges for coal” for the purpose of escalating the cost of inland handling charges at loading and unloading ports. At the end of the first Month in the accounting year in which COD occurs and for subsequent accounting years, the monthly escalation rate specified by CERC for payment by using (i) “Escalation rate for transportation of imported coal” for the purpose of escalating the cost of coal transportation on Ocean Freight and (ii) “Escalation rates for inland transportation charges for coal” for the purpose of escalating the cost of inland handling charges at loading and unloading ports.

For the avoidance of doubt, it is clarified that if the annual escalation rate specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Date, the value of the Escalation Index shall be 100.3917 [i.e. $100 * (1 + 0.047/12)$]. The value of the Escalation Index at the end of the Nth Month after the Bid Date shall be calculated as: $100 * (1 + N*0.047/ 12)$. The value of the escalation rate and base value of index shall be modified as and when specified by CERC. The value of the Escalation Index shall be calculated up to the fourth decimal point.

For the avoidance of doubt, it is clarified that if the monthly escalation rate specified by CERC is 4.7% per month, then at the end of the first Month in the accounting year COD declared, the value of the Escalation Index shall be 104.7000 [i.e. $100 * (1 + 0.047)$] and if for the subsequent month, the monthly escalation rate specified by CERC is 5% per month, then at the end of the second Month after the Bid Date, the value of the Escalation Index shall be 109.9350 [i.e. $104.7000 * (1 + 0.05)$]. The value of the escalation rate and base value of index shall be modified as and when specified by CERC. The value of the Escalation Index shall be calculated up to the fourth decimal point.

In case of transportation of Domestic Fuel by ocean, Clause 22.2.4 (i), Clause 22.2.4

(ii) and Clause 22.2.4 (iii) shall be applicable. In case of transportation of Domestic Fuel by non-ocean route, Clause 22.2.4 (i) and Clause 22.2.4 (ii) shall be applicable. In case of transportation of Domestic Fuel by using a mix of ocean and non-ocean route, Clause 22.2.4 (i), Clause 22.2.4 (ii), and Clause 22.2.4 (iii) shall be applicable.

It is further clarified that the weighted average Freight payable for transportation of Fuel under this clause shall not include any penalties/damages for partial loading/overloading and demurrage, payable by and attributable to the Supplier, and shall not form part of cost of Transportation.

Notwithstanding anything contained herein, the cost of transportation as determined under Clause 22.2.4 shall be subject to applicable adjustments in terms of GCV determined in accordance with Clause 22.3 and the SHR determined in accordance with Clause 22.1.1.

22.2.5 Omitted

22.2.6 In the event washing of coal is required under Applicable Laws, the cost of washing shall be included in the Landed Fuel Cost and such cost shall be lower of, (a) the average cost of washing applicable for relevant month incurred by CIL for similar washing and (b) the actual cost paid by the Supplier. Provided, however, that in case the washery is operated by the Supplier, the cost of washing as certified by the Statutory Auditor of the Supplier shall be deemed to be the actual cost paid by the Supplier for the purposes of this Clause 22.2.6.

22.2.7 Omitted.

22.2.8 Omitted

22.2.9 Provided that in case of transportation of domestic Fuel by ocean route or by a mix of ocean and non-ocean route, the cost of Inland Handling charges for domestic Fuel at loading and unloading ports shall be calculated as follow:

Accounting Year after the Bid Due date:

$$CH_n = QCH_n * q(CH)$$

At the end of the first month in the accounting year in which COD occurs:

$$CH_{n+1} = CH_n * p(CH)$$

QCH_n is the Quoted cost of Inland Handling charges for domestic Fuel in Rs/kWh at the time of the Bid.

$p(CH)$ is the Monthly Escalation Index for inland handling of imported coal as per Escalation Index computation explained under Clause 22.2.4(iii) at the beginning of the Month “m” (expressed as a number)

q(CH) is the Annual Escalation Index for inland handling of imported coal as per Escalation Index computation explained under Clause 22.2.4(iii) (expressed as a number)

Notwithstanding anything contained herein, the cost of transportation as determined under Clause 22.2.4 shall be subject to applicable adjustments in terms of GCV determined in accordance with Clause 22.3 and the SHR determined in accordance with Clause 22.1.1.

22.3 Determination of GCV for Allocated Coal

- 22.3.1 The weighted average of the GCV of Fuel from Allocated Coal linkage received during any month immediately at the Power Station shall be reckoned as the average GCV on “As Received Basis” (the “**Average GCV**”) for the purposes of this Article 22 and shall, subject to the provisions of Clause 22.2.2, apply for computing the applicable element of the Landed Fuel Cost and the Fuel Charge payable for the use of such Fuel. For the avoidance of doubt, the Average GCV hereunder shall be computed separately for Allocated Coal, any Fuel procured under AFSA and any other Fuel, as the case may be, for the purposes of determining the Fuel Charge for Allocated Coal.
- 22.3.2 The Average GCV of Fuel from Allocated Coal to be determined for the purpose of Clause 22.3.1, shall be determined in accordance with the certification and classification provided by an independent agency appointed by the Utility at its costs and expenses. The Supplier shall provide such assistance as the independent agency may reasonably require for such sampling and testing. The Parties further agree that the Average GCV determined in accordance with such certification shall form the basis of computation of Fuel Charge for Allocated Coal, save and except as provided in Clause 22.3.7.
- 22.3.3 The independent agency so appointed shall collect random samples of Fuel in accordance with the applicable codes of the Bureau of Indian Standards (BIS) immediately at the Power Station and all the samples so collected during the preceding 24 (twenty four) hours shall be tested by the independent agency at 1100 hours each day to determine the Average GCV thereof, in accordance with the applicable codes of the Bureau of Indian Standards (BIS), and after adjusting 85 kCal/kg (or such value as notified by CERC from time to time) on account of storage/stacking losses, and the results of such testing shall be conveyed forthwith to the Utility and the Supplier for their information and record with such particulars as the Parties may require.
- 22.3.4 One-half of the quantity of each sample collected in accordance with the provisions of Clause 22.3.3 shall be stored and made available for testing thereof by the Supplier, if required, at any time within a period of 1 (one) month from the date of sampling at the Power Station.

22.3.5 Omitted.

22.3.6 For determining the actual GCV of Fuel from Allocated Coal, the Utility shall be entitled but not under any obligation to inspect the relevant records of the Supplier, and may, at its own cost, conduct or cause to be conducted, sampling and testing of stored Fuel in accordance with Good Industry Practice, to determine its conformity with the Specifications and Standards and also with the tests conducted by the independent agency pursuant to the provisions of Clause 22.3.3. The Supplier shall provide such assistance as the Utility may reasonably require for such sampling and testing. In the event of a dispute relating to the procedure and outcome of any sampling or testing, the Parties shall remit such tests to a reputed independent laboratory or agency and in the event that the Parties fail to agree on appointment of an independent agency within 7 (seven) days of the notice of dispute issued by a Party, the independent laboratory or agency shall be specified by the Commission.

22.3.7 If the sampling pursuant to Clause 22.3.6 demonstrates that the actual GCV from Allocated Coal determined for any month is more than the GCV determined in accordance with the provisions of Clause 22.3.2, the Average GCV for that month shall be deemed to be the lower of the GCV determined by sampling pursuant to the provisions of Clause 22.3.6 and the Average GCV determined pursuant to the provisions of Clause 22.3.2, and in the event of any Dispute relating to sampling, the Dispute Resolution Procedure shall apply.

22.3.8 Notwithstanding anything to the contrary in this Article 22, the Parties expressly agree that the Utility shall not be liable to any payments in respect of the cost of Fuel, if such payments exceed the amounts due and payable in accordance with the provisions of the clause 22.2.3/the FSA or AFSA, as the case may be, in respect of the price of Fuel for Allocated Coal or the Average GCV (as determined under Clause 22.3.1) thereof and any additional burden in this behalf, not attributable to Utility, shall at all times be borne by the Supplier.

22.4 Fuel Supply Agreement for Allocated Coal

22.4.1 Prior to the Scheduled Completion Date, the Supplier shall have executed an agreement with a supplier of Fuel for supply of Fuel sufficient for generating electricity at no less than 85% (eighty five per cent) of the Contracted Capacity during each month for a period of at least 30 (thirty) years from COD, substantially in accordance with the provisions of Clause 22.5 (the “**Fuel Supply Agreement**” or “**FSA**”).

22.4.2 Omitted

22.4.3 The Fuel procured under the FSA shall be utilised by the Supplier for production of electricity to be supplied to the Utility as part of the Contracted Capacity and only, for the sale of the unutilized capacity to Buyers, if any, subject to the provisions of Clause 22.6.

22.4.4 Upon expiry of the FSA, the Supplier shall make best efforts to renew the same or

execute a substitute thereof, failing which the provisions of Clauses 22.9 and 22.10 shall apply.

- 22.4.5 Any penalty imposed by the coal company on the Supplier, solely on account of lower dispatch by the Utility, for (i) under lifting of coal and/or (ii) failure to meet minimum off-take guarantee, should be completely pass-through.

22.5 Terms of FSA for Allocated Coal

The FSA executed in pursuance of Clause 22.4.1 shall, for and in respect of the supply of Allocated Coal for production of electricity from the Contracted Capacity, include the following terms and conditions:

- (a) The minimum annual quantity of Fuel to be supplied under the FSA shall be sufficient for generating electricity for Despatch of at least 85% (eighty five per cent) of the Contracted Capacity during each month (the “MACQ”);
- (b) the FSA shall specify the grade of Fuel comprising GCV and ash content, which shall not be changed materially without mutual consent of the Supplier and the supplier of Fuel;
- (c) the FSA shall specify the methodology for testing and weighment of Fuel prior to its delivery to the Supplier and shall provide for a dispute resolution mechanism in the event of disputes on any aspect of the FSA;
- (d) supply of MACQ under FSA shall commence at least 30 (thirty) days prior to synchronization of the Power Station;
- (e) Omitted;
- (f) the right of the supplier of Fuel to terminate the FSA for a material breach thereof by the Supplier shall be subject to the Utility’s rights to substitute the Supplier and cure the breach;
- (g) the Supplier shall have the right and obligation to assign all its rights, interests and obligations under the FSA in favour of the Utility with the consent of the supplier of Fuel in accordance with the terms and conditions specified in the FSA; and
- (h) upon occurrence of a Supplier Default under this Agreement, the Utility shall, without any further approval or consent of the Supplier, have the right to assign or seek assignment of the FSA to its nominee in accordance with the terms and conditions specified in the FSA, and upon the Utility exercising its right hereunder, the Supplier shall cease to have any right or title to procure Allocated Coal from the supplier of Fuel.]

22.6 Use of Allocated Coal for Buyers

- 22.6.1 Upon the Supplier meeting its obligations for and in respect of the supply of

electricity to the Utility as part of the Contracted Capacity, it may generate electricity from Allocated Coal for sale thereof to Buyers subject to the provisions of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time, shall be applicable. .

22.6.2 In the event the Supplier uses the Allocated Coal in breach of the provisions of Clause 22.6.1 or diverts any Contracted Capacity to Buyers, save and except as provided in this Agreement, it shall pay to the Utility Damages equal to the higher of, (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoidance of doubt, no Fixed Charge or any amount in lieu thereof shall be due or payable to the Supplier for and in respect of any electricity sold hereunder.

22.6.3 The Supplier shall furnish to the Utility, within 7 (seven) days of completion of each month, a statement of receipts from Capacity under clauses 22.6 and the Revenue Share therefrom, substantially in the form set forth in Schedule-M.

22.6.4 The Supplier shall, for each Accounting year, consolidate the statements in respect of Revenue Share from Capacity under clause 22.6 and provide 2 (two) copies thereof, duly certified by the Statutory Auditor, to the Utility within 60 (sixty) days of the close of that Accounting Year.

22.6.5 Payments for and in respect of Revenue Share for any month may be settled by netting-off the same against the succeeding month Monthly Invoice provided by the Supplier to the Utility, save and except any Disputed Amounts.

22.7 Minimum Fuel Stock

The Supplier shall at all times maintain a minimum stock of Allocated Coal and Fuel from AFSA, if any, which is sufficient for full production of electricity from Contracted Capacity for supply thereof to the Utility for a continuous period of 10 (ten) days (the “**Minimum Fuel Stock**”).

22.8 Fuel Shortage

22.8.1 In the event the Supplier anticipates a shortfall in the production of electricity for supply to the Utility from Contracted Capacity on account of a shortfall in supply of Fuel, and/or delays in transportation thereof, for reasons beyond the control of the Supplier (the “**Fuel Shortage**”), the Supplier shall, as soon as practicable but in any event no later than 7 (seven) days from the date when it anticipated the Fuel Shortage, notify the Utility of the nature, extent and period of Fuel Shortage and the reasons thereof.

22.8.2 Omitted

22.9 Additional Fuel Supply Arrangement

22.9.1 In the event of Fuel Shortage, the Supplier shall make best efforts to identify, as soon as may be possible, additional source(s) of fuel supply and transportation to meet such Fuel Shortage (the “**Additional Fuel Supply Arrangement**” or “**AFSA**”). The Supplier shall notify the Utility of the details of the Landed Fuel Cost under the AFSA and provide such other information as the Utility may require, for demonstrating that the AFSA is based on competitive terms available for supply and transportation of such Fuel. The Supplier shall, with the concurrence of the Utility submit the AFSA for review and approval of the Commission.

22.9.2 The Supplier shall procure Fuel under the AFSA only with prior approval of the Utility, which approval the Utility may deny in its sole discretion. Provided, however, that if the Utility approves part supply of Fuel under the Additional Fuel Supply Arrangement, it shall, in consultation with the Supplier, approve such additional costs as may be applicable for purchase of Fuel in comparatively smaller quantities and such costs shall be considered as part of the Landed Fuel Cost in determining the Fuel Charges.

22.10 Fuel Charge under AFSA

22.10.1 If the Supplier enters into an AFSA in accordance with the provisions of Clause 22.9, the Fuel Charge payable by the Utility for any electricity produced from such Fuel shall be determined on the basis of Landed Fuel Cost and Average GCV of such Fuel to be computed in accordance with this Article 22.

22.10.2 In the event the Supplier fails to procure Fuel under an AFSA, the Fixed Charge payable for and in respect of any Non-Availability as a result thereof shall be equal to 70% (seventy per cent) of the Fixed Charge. In the event the Supplier procures the AFSA, the Utility/Commission shall endeavor to approve/reject the AFSA within 90 days from the date of submission by the Supplier. In case such AFSA is not approved in full or part by the Utility or the Commission, as the case may be, the Fixed Charge payable for and in respect of any Non-Availability as a result thereof shall be equal to 100% (hundred per cent) of the Fixed Charge.

22.10.3 In the event the FSA is terminated on account of default by the Supplier and the Supplier fails to make any Additional Fuel Supply Arrangement, no Fixed Charge shall be payable by the Utility for and in respect of any Non-Availability arising due to Fuel Shortage.

22.11 Reporting of Fuel stock

22.11.1 The Supplier shall, no later than 1100 hours on each day, provide a statement to the Utility setting out (a) the opening stock of Fuel at 0000 hrs of the preceding day (b) the arrival of fresh stocks, if any during the preceding day, (c) the consumption of Fuel during the preceding day; and (d) the closing stock on the preceding day at 2400 hrs.

22.11.2 The Supplier shall, no later than 1100 hours on each day, provide a statement to the Utility setting out the quantities and the average GCV of the Allocated Coal, any Fuel procured under AFSA and any other Fuel, as the case may be, which were utilised for generation of electricity during the preceding day. Based on such average GCV, the consumption of respective Fuels and the electricity generated during the preceding day, the Supplier shall compute and specify the actual SHR for such preceding day.

22.12 Improvement in SHR

22.12.1 In the event the statements provided under Clause 22.11 during the course of any quarter establish that the average actual SHR is better than the SHR specified in the Completion Certificate and the difference between the average actual SHR and specified SHR in Completion Certificate exceeds 1% (one per cent), the specified SHR in Completion Certificate shall be reduced by one-half of such difference and the SHR so determined shall be the specified SHR of the Power Station for purposes of this Agreement, including for determination of the Fuel Charge under this Article 22. For the avoidance of doubt and by way of illustration, if the specified SHR in Completion Certificate of the Power Station is 2,200 and the average actual SHR is 2,160, the specified SHR shall be revised and fixed at 2,180.

22.12.2 Upon revision of SHR pursuant to the provisions of Clause 22.12.1, the Fixed Charge shall be increased in accordance with the provisions of Clause 21.2.2 as if such SHR is specified in the Completion Certificate.

ARTICLE 23

PAYMENT SECURITY

23.1 Default Escrow Account

- 23.1.1 The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility's bank substantially in the form specified in Schedule-J (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 50% (fifty per cent) of the annual Capacity Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 23.1 and the Default Escrow Agreement.
- 23.1.2 The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-K (the "**Deed of Hypothecation**"), whereby the Utility shall hypothecate to the Supplier an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.
- 23.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 20% (twenty per cent) of the annual Capacity Charge (the "**Minimum Monthly Payment**") shall be withheld in the Default Escrow Account for payment to the Supplier against such Monthly Invoice and the balance remaining shall be available to the Utility for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.
- 23.1.4 The Utility shall procure that the Supplier has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.

23.2 Letter of Credit

- 23.2.1 The Utility shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "**Letter of Credit**"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-L and

shall come into effect on COD and shall be modified once every year to reflect the revision in Fixed Charge in accordance with the provisions of this Agreement.

23.2.2 The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.

23.2.3 In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:

- (a) a copy of the Monthly Invoice which has remained unpaid; and
- (b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due has remained unpaid.

23.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, the Utility shall, within a period of 15 (fifteen) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 23.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Fixed Charge, except to give effect to such revision once every year.

23.2.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable E-bank guarantee or any equivalent instrument as may be mutually agreed upon.

23.3 Recovery from sale of Contracted Capacity

23.3.1 In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be appropriated for recovery of its dues from the Utility. The Parties further agree that the Supplier shall be entitled to use Allocated Coal for production of electricity and sale hereunder.

23.3.2 The sale of Contracted Capacity pursuant to Clause 23.3.1 shall not extinguish any liability of the Utility or any claim that the Supplier may have against the Utility, save and except to the extent of amounts recovered under the provisions of Clause 23.3.1.

23.3.3 Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.

23.4 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.

ARTICLE 24

DESPATCH OF CONTRACTED CAPACITY

24.1 Despatch of Contracted Capacity

24.1.1 The Utility shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the Supplier for production of electricity and despatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the “**Despatch**”). Provided that the Utility shall not Despatch in excess of its entitlement in the Contracted Capacity, unless mutually agreed between the Parties. For the avoidance of doubt, the Parties agree that the Utility may, in its discretion, direct the Supplier to Despatch on its behalf, all or part of the Contracted Capacity, in favour of the third parties designated by it from time to time on the express understanding that the payment therefor shall be made by the Utility to the Supplier as if the electricity has been Despatched in favour of the Utility. The Parties further agree that any additional cost incurred by the Supplier for Despatch to such third parties shall be due and payable by those third parties.

24.1.2 Pursuant to the provisions of Clause 24.1.1, the Supplier shall plan the production and Despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.

24.1.3 Omitted.

24.1.4 In the event the Supplier schedules any electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement, the Supplier shall pay Damages equal to the higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoidance of doubt, no Fixed Charge or any amount in lieu thereof shall be due or payable to the Supplier for and in respect of any electricity sold hereunder.

24.2 Settlement of charges for Deviation

24.2.1 All payments due to or from the Supplier on account of any deviation in terms of the DSM Regulations and any amendments thereof (the “**Deviation**”) shall be solely to the account of and borne by the Supplier, save and except as provided in Clauses 24.2.2 and 24.2.3.

24.2.2 Subject to the provisions of the Applicable Laws, the Utility shall have the first right to Despatch, in the form of Deviation, any surplus electricity generated from the entitlement of the Utility in the Contracted Capacity by utilising the Fuel procured under Clause 22.4, and 90% (ninety per cent) of the revenues accruing from such charges for Deviation, after deducting an amount equal to the Tariff payable for such electricity, shall be paid by the Supplier to the credit of the Utility and the balance remaining may be appropriated by the Supplier.

24.2.3 Subject to the provisions of Clause 24.2.2, the Supplier may, in addition to the scheduling under Clause 24.1, supply electricity produced from the unutilised

Contracted Capacity specified in Clause 18.5, and in such an event the Fixed Charge due and payable by the Utility to the Supplier for and in respect of the Contracted Capacity utilised hereunder shall be deemed to be waived and shall not be payable by the Utility. Provided further that in the event the Supplier uses the Fuel procured under and in accordance with the provisions of Clause 22.4, the Supplier shall also pay the cost of Fuel and the Revenue Share specified therein.

- 24.2.4 Payments for and in respect of the cost of Fuel and the Revenue Share specified as per the provisions of Clause 24.2.2 and 24.2.3, for any month shall be due and payable by the Supplier within 15 (fifteen) days of the close of that month.

24.3 Overriding powers of the Utility

- 24.3.1 Upon occurrence of a Supplier's Default, the Utility may, in its discretion, direct the Supplier to stop sale of any or all its electricity to Buyers from and in respect of Contracted Capacity, and to sell all such electricity to the Utility in accordance with the provisions of this Agreement. Upon receipt of any directions hereunder from the Utility, the Supplier shall comply forthwith and issue despatch and scheduling instruction to the RLDC and SLDC in conformity with the directions of the Utility.
- 24.3.2 In the event the Supplier does not comply with the directions of the Utility issued in pursuance of Clause 24.3.1, the Utility may issue directions to the SLDC to undertake despatch and scheduling in accordance with such instructions as the Utility may issue hereunder from time to time.
- 24.3.3 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the SLDC and obtain a receipt thereof. By furnishing a copy of this Agreement to the SLDC, the Supplier shall be deemed to have agreed and undertaken to abide by the provisions of this Clause 24.3 and to have given irrevocable instructions to the SLDC to carry out all the directions given by the Utility hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Clause 24.3 shall remain in force and effect until the Vesting Certificate is issued under and in accordance with the provisions of Clause 32.5.
- 24.3.4 The exercise of any overriding powers by the Utility under this Clause 24.3 shall not in any manner affect or diminish the liability and obligation of the Utility to make payments to the Supplier for the electricity supplied or the Availability of Contracted Capacity and the Utility shall, for this purpose, ensure and procure compliance of the provisions of Article 23. Notwithstanding anything to the contrary contained in this Clause 24.3, the Utility shall not be entitled to issue any directions hereunder nor shall the SLDC comply with such directions to the extent and for the period during which Utility is in material breach of the provisions of Article 23 or of its payment obligations to the Supplier under this Agreement, and in such an event the provisions of Clause 23.3 shall apply.

24.4 Ramp up of Despatch

In the event the Utility Despatches less than 2% (two per cent) of its entitlement in the Contracted Capacity at any time and requires ramping up of generation thereafter, it shall allow a period of 8 (eight) hours to the Supplier for reaching Availability equal to such entitlement in the Contracted Capacity and shall make an additional payment on account of increase in SHR computed in accordance with the provisions of Schedule-C for and in respect of different levels of generation during the course of ramping up. For the avoidance of doubt, the Parties agree that in the event the Supplier fails to reach such Availability within 8 (eight) hours, the shortfall thereof shall be deemed to be Mis-declaration under the provisions of Clause 21.5.5. The Parties further agree that the liability of the Utility hereunder shall at all times be reckoned with reference to its entitlement in the Contracted Capacity.

Provided that notwithstanding anything to the contrary contained herein above, the operation of the Power Station shall be governed in accordance with relevant provisions of the Indian Electricity Grid Code (IEGC) Regulations, 2023, as amended from time to time.

ARTICLE 25

OMITTED

ARTICLE 26

INSURANCE

26.1 Insurance during Contract Period

The Supplier shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Supplier shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Utility as a consequence of any act or omission of the Supplier during the Contract Period.

26.2 Insurance Cover

Without prejudice to the provisions contained in Clause 26.1, the Supplier shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Utility or others caused by the Project;
- (c) the Supplier's general liability arising out of the Supply Contract;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Supplier and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

26.3 Notice to the Utility

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Supplier shall, by notice, furnish to the Utility, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Utility may require the Supplier to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.4 Evidence of Insurance Cover

All insurances obtained by the Supplier in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within

15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to

the Utility, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Utility .

26.5 Remedy for failure to insure

If the Supplier shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Utility shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier.

26.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Supplier pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Utility, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set- off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

26.7 Supplier's waiver

The Supplier hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Utility and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Supplier may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Supplier pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

26.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Supplier and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Power Station, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

26.9 Compliance with conditions of insurance policies

The Supplier expressly acknowledges and undertakes to fully indemnify the Utility from and against all losses and claims arising from the Supplier's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 27

ACCOUNTS AND AUDIT

27.1 Audited accounts

- 27.1.1 The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Utility, other Distribution Licensees and Buyers, and all incomes derived/collected by it from or on account of the Power Station and/or sale of electricity from the Power Station), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Supplier shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain.
- 27.1.2 The Supplier shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Utility its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 27.1.3 On or before the thirty-first day of May each Year, the Supplier shall provide to the Utility, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Tariff, (b) revenues from sale of electricity to Distribution Licensees and Buyers, and (c) such other information as the Utility may reasonably require.

27.2 Appointment of auditors

- 27.2.1 The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-N. All fees and expenses of the Statutory Auditors shall be borne by the Supplier.
- 27.2.2 The Supplier may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Utility, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 27.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Utility shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

27.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Supplier to the Utility in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

27.4 Set-off

In the event any amount is due and payable by the Utility to the Supplier, it may set-off any sums payable to it by the Supplier and pay the balance remaining. Any exercise by the Utility of its rights under this Clause 27.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

27.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Utility by recourse to the Dispute Resolution Procedure.

Part V

Force Majeure and Termination

ARTICLE 28

FORCE MAJEURE

28.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of including but not limited to, any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

28.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Supplier, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Power Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 28.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India, if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Supplier by such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Supplier in any proceedings for reasons other than (i) failure of the Supplier to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or

Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Utility;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

28.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- d) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Supplier for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- e) failure of the Utility to permit the Supplier to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor;
- g) any Indirect Political Event that causes a Non-Political Event; or
- h) any event or circumstances of a nature analogous to any of the foregoing.
- i) Any event or circumstance in Clause 28.4 (a) to (e) attributable to Government of India or its instrumentality.

28.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any State Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Supplier or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Supplier or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Supplier's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Supplier by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

28.5 Duty to report Force Majeure Event

28.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall, by notice, report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

28.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material

effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

28.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6 Effect of Force Majeure Event on the Supply Contract

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and in Clause 20.1 for achieving Financial Close and satisfying the Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Contract Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Supplier is unable to transmit electricity to the Grid despite making best efforts or it is directed by the Utility, RLDC or SLDC or any Government Instrumentality to suspend generation during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period equal in length to the period during which the Supplier was prevented from generating electricity on account thereof; provided that in the event of reduction in generation on account of partial inability or suspension, as the case may be, which cause the Availability on any day to decline below 80% (eighty per cent) of the Average Daily Availability, the Utility shall extend the Contract Period in proportion to the loss of such Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per cent) in Availability for 4 (four) days as compared to the Average Daily Availability shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

28.7 Allocation of costs arising out of Force Majeure

28.7.1 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contract Capacity of the Power Station (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- (b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Utility to the Supplier.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant. If there is any Dispute with respect to the determination of the costs for a Force Majeure Event payable by the Utility to the Supplier, such Disputes shall be settled through the Dispute Settlement mechanism provided in this Agreement.

28.7.2 Notwithstanding anything contained in this Clause 28.7, if during the occurrence of a Force Majeure Event, the Contracted Capacity or part thereof is deemed Available in accordance with the provisions of Clause 5.1.4, the Utility shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Supplier under this Clause 28.7.

28.7.3 Save and except as expressly provided in this Article 28, neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

28.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion, issue the Termination Notice.

28.9 Termination of Fuel supply

In the event of Termination for Force Majeure Event, the Supplier shall cease to be entitled to the supply or production of Allocated Coal to the extent allocated or utilised for the Contracted Capacity, and the provisions of FSA to the extent thereof shall be held in abeyance until the use of such Allocated Coal for any other purpose, utility or buyer is authorized by the Central Government.

28.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

28.11 Relief for Unforeseen Events

28.11.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Power Station. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and thereupon deal with it in accordance with the provisions of this Clause 28.11.

28.11.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

28.11.3 The conciliation tribunal referred to in Clause 28.11.2 shall conduct its proceedings in accordance with the provisions of Article 36 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 28.11.

28.11.4 The conciliation tribunal referred to in this Clause 28.11 shall conduct preliminary proceedings to satisfy itself that -

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 28.11.

28.11.5 Upon completion of the conciliation proceedings referred to in this Clause 28.11, the conciliation tribunal may, by a reasoned order, make recommendations which

shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

28.11.6 Within 15 (fifteen) days of receiving the order referred to in Clause 28.11.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may, with prior approval of the Commission, enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

ARTICLE 29

COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Supplier

In the event of the Supplier being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Utility by way of compensation, all direct costs suffered or incurred by the Utility as a consequence of such material breach or default; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Utility. For the avoidance of doubt, the Parties agree that the compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any. The Parties further agree that the non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising as a result of breach of Agreement by the other Party.

29.2 Compensation for default by the Utility

In the event of the Utility being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Supplier by way of compensation, all direct costs suffered or incurred by the Supplier as a consequence of such material breach or default; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, and other revenues, debt repayment obligations, or any consequential losses, and for determining such compensation, information contained in the Financial Package may be relied upon to the extent it is relevant. The Parties further agree that the non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising as a result of breach of Agreement by the other Party.

29.3 Extension of Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving COD or leads to reduction in the realisation of Fixed Charge, as the case may be, the Utility shall, in addition to payment of compensation under Clause 29.2, extend the Contract Period, such extension being equal in duration to the period by which COD was delayed or the payment of Fixed Charge was reduced on account thereof, as the case may be; and in the event of reduction in Fixed Charge where the daily collection is less than 80% (eighty per cent) of the Average Daily Fixed Charge, the Utility shall, in addition to payment of

compensation hereunder, extend the Contract Period in proportion to the loss of Fixed Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in the realisation of Fixed Charge, as compared to the Average Daily Fixed Charge, for 4 (four) days shall entitle the Supplier to extension of 1 (one) day in the Contract Period.

ARTICLE 30

SUSPENSION OF SUPPLIER'S RIGHTS

30.1 Suspension upon Supplier Default

- 30.1.1 Upon occurrence of a Supplier Default, the Utility shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to suspend all rights of the Supplier under the Fuel Supply Agreement relating to the Supplier's right to receive Allocated Coal, produce electricity therefrom and collect revenues from sale of such electricity (the "**Suspension**"), save and except as provided in Clause 31.3.3.
- 30.1.2 During the period of Suspension, the Utility shall pay to the Supplier 20% (twenty per cent) of the Fixed Charge due and payable to the Supplier for and in respect of the Contracted Capacity.
- 30.1.3 During the period of Suspension hereunder, all rights and liabilities vested in the Supplier in accordance with the provisions of this Agreement shall continue to vest therein and the Supplier undertakes to indemnify the Utility for all costs incurred during such period.

30.2 Revocation of Suspension

Upon the Supplier having cured the Supplier Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Utility shall revoke the Suspension forthwith and restore all rights of the Supplier under this Agreement.

30.3 Substitution of Supplier

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Supplier under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Utility shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.4 Termination

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Utility upon occurrence of a Supplier Default.

ARTICLE 31

TERMINATION

31.1 Termination for Supplier Default

31.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Supplier fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 120 (one hundred and twenty) days, the Supplier shall be deemed to be in default of this Agreement (the “**Supplier Default**”), unless the default has occurred as a result of any breach of this Agreement by the Utility or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Supplier fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Supplier fails to meet any Condition Precedent or cure the Supplier Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Supplier does not achieve the Scheduled Completion Date, as the case may be, due in accordance with the provisions of Schedule-E and continues to be in default for 12 (twelve) months;
- (d) the Supplier is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (e) the Supplier has failed to make any payment to the Utility (a) of an amount exceeding Rupees 1 (One) Crore required to be made to Utility under this Agreement, within three 3 (three) Months after the Due Date of an undisputed invoice /demand raised by the Utility on the Supplier or (b) of an amount upto Rupees 1 (One) Crore required to be made to Utility under this Agreement within six (6) Months after the Due Date of an undisputed invoice/demand;
- (f) a breach of the Fuel Supply Agreement or any other Project Agreements by the Supplier has caused a Material Adverse Effect;
- (g) the Supplier uses the Allocated Coal in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 22.6.2;
- (h) the Supplier creates any Encumbrance in breach of this Agreement;
- (i) the Supplier repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

- (j) the Supplier schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Clause 24.1.4;
- (k) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (l) the Supplier fails to achieve a monthly Availability of 65% (sixty five per cent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, or (ii) an act or omission of the Utility, not occurring due to any default of the Supplier;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Supplier under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Supplier, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Supplier has caused a Material Adverse Effect;
- (o) the Supplier is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Supplier or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Supplier has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Utility, a Material Adverse Effect;
- (q) a resolution for winding up of the Supplier is passed;
- (r) any petition for winding up of the Supplier is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Supplier is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Supplier are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Supplier under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the

Supplier as at the Appointed Date;

- (iii) each of the Project Agreements remains in full force and effect; and
- (iv) such amalgamation or reconstruction is approved by the Commission.
- (s) any representation or warranty of the Supplier herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Supplier is at any time hereafter found to be in breach thereof;
- (t) the Supplier submits to the Utility any statement, notice or other document, in written or electronic form, which has a material effect on the Utility's rights, obligations or interests and which is false in material particulars;
- (u) the Supplier has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement;
- (v) the Supplier issues a Termination Notice in violation of the provisions of this Agreement; or
- (w) the Supplier commits a default in complying with any other provision of this Agreement, if such default causes or may cause a Material Adverse Effect on the Utility.

31.1.2 Without prejudice to any other rights or remedies which the Utility may have under this Agreement, upon occurrence of a Supplier Default, the Utility shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier; provided that before issuing the Termination Notice, the Utility shall by a notice inform the Supplier of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Supplier to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 31.1.3.

31.1.3 The Utility shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Supplier in accordance with the Substitution Agreement. In the event the Utility receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is

cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Utility shall withdraw its notice referred to above and restore all the rights of the Supplier:

Provided further that upon written request from the Lenders' Representative and the Supplier, the Utility shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Utility may deem appropriate.

31.2 Termination for Utility Default

31.2.1 In the event that any of the defaults specified below shall have occurred, and the Utility fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, the Utility shall be deemed to be in default of this Agreement (the “**Utility Default**”) unless the default has occurred as a result of any breach of this Agreement by the Supplier or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Utility commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Supplier;
- (b) the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or
- (c) the Utility repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

31.2.2 Without prejudice to any other right or remedy which the Supplier may have under this Agreement, upon occurrence of a Utility Default, the Supplier shall be entitled to terminate this Agreement by issuing a Termination Notice to the Utility; provided that before issuing the Termination Notice, the Supplier shall, by a notice, inform the Utility of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Utility to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

31.3 Termination Payment

31.3.1 Upon Termination on account of a Supplier Default after COD, the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for periods as mentioned below as if the Power Station had operated for such periods from the date of Termination.

No. of years post COD	Period of Fixed Charge payable
1-5 years	2 (Two) years
6-10 years	1 (one) year 6 (Six) months

11- 15 years	1 (One) year
16 -30 years	6 (Six) months

For the avoidance of doubt, the Parties expressly agree that if the Termination occurs on account of Supplier Default in the 6th year after COD, and the Fixed Charge of the corresponding year is Rs.4.26/kwh, then the Termination payment is 1.5 times of the Fixed Charge payable on the 5th year after COD.

- 31.3.2 Upon Termination on account of a Utility Default after COD, the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for periods as mentioned below as if the Power Station had operated for such periods from the date of Termination.

No. of years post COD	Period of Fixed Charge payable
1-5 years	2 (Two) years
6-10 years	1 (one) year 6 (Six) months
11- 15 years	1 (One) year
16 -30 years	6 (Six) months

For the avoidance of doubt, the Parties expressly agree that if the Termination occur on account of Utility Default in the 6th year after COD, and the Fixed Charge of the corresponding year is Rs.4.26/kwh, then the Termination payment is 1.5 times of the Fixed Charge payable in the 5th year after COD.

- 31.3.3 Upon Termination or expiry of the Contract Period by efflux of time, the Fuel Supply Agreement or any other arrangement for production and supply of Allocated Coal shall cease to be effective and the Supplier shall have no right whatsoever to use such Allocated Coal for the Power Station without express permission or authorization by the Central Government in this behalf.
- 31.3.4 Termination Payment shall be due and payable within 90 (ninty) days of a demand being made with the necessary particulars, and in the event of any delay, the defaulting Party shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Utility of its payment obligations in respect thereof hereunder.
- 31.3.5 The Supplier expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Supplier on account of Termination of this Agreement for any reason whatsoever and that the Supplier or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Extension of Contract Period

Omitted

31.5 Restriction on use of Allocated Coal

- 31.5.1 Upon Termination, the Supplier shall not in any manner utilise the Allocated Coal, which is required for and linked to the Contracted Capacity and shall relinquish all rights and title to such Allocated Coal, as the case may be, in favour of the Utility, for use or transfer thereof in such manner as it may determine. The Supplier further agrees and undertakes that it shall not despatch or schedule any electricity produced from such Allocated Coal or save and except in accordance with the instructions of the Utility. For avoidance of doubt, the Supplier agrees and confirms that its rights and obligations under the Fuel Supply Agreement shall be read as modified to the extent of the provisions of this Clause 31.5, save and except as provided in Clause 31.3.3.
- 31.5.2 Pursuant to the provisions of Clause 31.5.1, the Supplier agrees and undertakes to give irrevocable instructions and authority to the RLDC and SLDC not to entertain any instructions for despatch and scheduling that the Supplier may give after Termination for and in respect of the Contracted Capacity, save and except to the extent such instructions are expressly confirmed by the Utility.
- 31.5.3 Upon Termination, the Allocated Coal, if any, which is linked to or allocated for the Contracted Capacity shall, save and except as provided in Clause 31.3.3, be utilised solely in accordance with the instructions of the Utility and the Utility may, subject to Applicable Laws, allocate, transfer or divert such Allocated Coal in such manner as it may deem fit.

31.6 Instructions to RLDC and SLDC

- 31.6.1 The Supplier shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC / SLDC and obtain a receipt thereof. By furnishing such copy hereunder, the Supplier shall be deemed to have given irrevocable instructions and authority to the RLDC / SLDC to follow the instructions of the Utility in accordance with the provisions of this Article 31. The Supplier agrees and undertakes that it shall not in any manner challenge or revoke the provisions of this Article 31 or in any manner prevent the Utility, RLDC or SLDC from giving effect thereto.
- 31.6.2 The Utility agrees and undertakes to exercise its rights hereunder only to the extent of the Contracted Capacity and the use of Allocated Coal therefor, and the Supplier may supply electricity to other Distribution Licensees and Buyers in accordance with the provisions of this Agreement.

31.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the

Termination to the extent such survival is necessary for giving effect to such rights and obligations.

31.8 Omitted

ARTICLE 32

DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

32.1.1 Upon Termination, the Supplier shall, save and except as provided in Clause 31.3.3, comply with and conform to the following Divestment Requirements:

- (a) execute such deeds of conveyance, documents and other writings as the Utility may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Supplier in the Fuel Supply Agreement to the extent of Allocated Coal that was required for the Contracted Capacity; and
- (b) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Supplier in the Allocated Coal, free from all Encumbrances, absolutely unto the Utility or to its nominee.

32.1.2 Subject to the exercise by the Utility of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Supplier, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

32.2 Omitted

32.3 Inspection

Not earlier than 60 (sixty) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Utility shall verify, after giving due notice to the Supplier specifying the time, date and place of such verification and/or inspection, compliance by the Supplier with the provisions of this Agreement.

32.4 Cooperation and assistance on transfer of Allocated Coal

The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the rights and possessions over the Allocated Coal, in accordance with the provision of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Utility and other members of the public.

32.5 Vesting Certificate

The divestment of all rights, title and interest over the Allocated Coal, if any, shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Utility shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-O (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Supplier of all of its rights, title and interest in the Allocated Coal, and their vesting in the Utility pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Utility or its nominee on, or in respect of, the Contracted Capacity on the footing that all Divestment Requirements have been complied with by the Supplier.

32.6 Divestment costs etc.

- 32.6.1 The Supplier shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Supplier in the with regard to Allocated Coal in favour of the Utility upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Supplier in connection with such divestment shall be borne by the Utility.
- 32.6.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

Part VI

Other Provisions

ARTICLE 33

ASSIGNMENT AND CHARGES

33.1 Restrictions on assignment and charges

- 33.1.1 Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Supplier to any person, save and except with the prior consent in writing of the Utility, which consent the Utility shall be entitled to decline without assigning any reason.
- 33.1.2 Subject to the provisions of Clause 33.2, the Supplier shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Supplier is a party, except with prior consent in writing of the Utility, which consent the Utility shall be entitled to decline without assigning any reason.

33.2 Permitted assignment and charges

- 33.2.1 The restraints set forth in Clause 33.1 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Power Station;
 - (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Power Station, and as security for indebtedness to the lenders of the Supplier and/or for working capital arrangements of the Supplier;
 - (c) assignment of rights, interest and obligations of the Supplier under the Agreement to or in favour of the lenders' representative as nominee and for the benefit of the senior lenders of the Supplier as security for financing provided by senior lenders and/or for working capital arrangements of the Supplier; and
 - (d) liens or encumbrances required by any Applicable Law.
- 33.2.2 The Supplier may mortgage, pledge, assign or hypothecate the lease hold rights of the Site and Project Assets to senior lenders as security for their debt.

33.3 Substitution Agreement

- 33.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Supplier pursuant to the agreement for substitution of the Supplier (the "**Substitution Agreement**") to be entered into amongst the Supplier, the Utility and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-P.
- 33.3.2 Upon substitution of the Supplier under and in accordance with the Substitution

Agreement, the Nominated Company substituting the Supplier shall be deemed to be the Supplier under this Agreement and shall enjoy all rights and be responsible for all obligations of the Supplier under this Agreement as if it were the Supplier; provided that where the Supplier is in breach of this Agreement on the date of such substitution, the Utility shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Supplier for curing such breach.

33.4 Assignment by the Utility

Notwithstanding anything to the contrary contained in this Agreement, the Utility may, after giving 60 (sixty) days' notice to the Supplier, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Utility, capable of fulfilling all of the Utility's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

33.5 Approvals for assignment

Any assignment under this Article 33 shall be subject to the approvals and consents required therefor under Applicable Laws, including approval of the Commission. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Utility to grant its approval to such assignment, save and except as provided herein.

ARTICLE 34

CHANGE IN LAW

34.1 Increase in costs

If as a result of Change in Law, the Supplier suffers an increase in costs or reduction in net after-tax return or other financial burden for and in respect of Contracted Capacity, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Supplier may so notify the Utility and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Supplier, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Supplier may, by issuing a Supplementary Invoice, require the Utility to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such Supplementary Invoice, along with particulars thereof, the Utility shall pay the amount specified therein; provided that if the Utility shall dispute such claim of the Supplier, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.1 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

Provided further that in case the matter is referred to be settled through Dispute Resolution Procedure as provided for under this Clause 34.1, the Utility shall, pending settlement of the claim of the Supplier on account of Change in Law by the Commission, within a period of 60 (sixty) days of the date of receipt of such Supplementary Invoice, compensate the Supplier for at least 50% (fifty percent) of such increase in cost or other financial burden, in order to place the Supplier in the same financial position as it would have enjoyed had it not been for the occurrence of the Change in Law resulting in such increase in cost or financial burden to the Supplier.

The Supplier shall refund any excess payment made by the Utility, or the Utility shall pay the balance compensation amount, as the case may be, within a period of 10 (ten) days from the date of decision of the Commission along with interest in accordance with Clause 38.4.

34.2 Reduction in costs

If as a result of Change in Law, the Supplier benefits from a reduction in costs or increase in net after-tax return or other financial gains for and in respect of Contracted Capacity, the aggregate financial effect of which exceeds the higher of

Rs. 1 crore (Rupees one crore) and 0.1% (zero point one per cent) of the Capacity Charge in any Accounting Year, the Utility may so notify the Supplier and propose amendments to this Agreement so as to place the Supplier in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Utility, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Utility may by notice require the Supplier to pay an amount that would place the Supplier in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Supplier shall pay the amount specified therein to the Utility; provided that if the Supplier shall dispute such claim of the Utility, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.2 shall be restricted to changes in law directly affecting the Supplier's costs of performing its obligations under this Agreement.

Provided further that in case the matter is referred to be settled through Dispute Resolution Procedure as provided for under this Clause 34.2, the Supplier shall, pending settlement of the claim of the Utility on account of Change in Law, within a period of 60 (sixty) days of the date of receipt of such claim, pay to the Utility for at least 50% (fifty percent) of such decrease in cost or other financial gain.

The Utility shall refund any excess payment made by the Supplier, or the Supplier shall pay the balance claim amount, as the case may be, within a period of 10 (ten) days from the date of decision of the Appropriate Commission along with interest in accordance with Clause 38.4.

34.3 Protection of NPV

Pursuant to the provisions of Clauses 34.1 and 34.2 and for the purposes of placing the Supplier in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Supplier has raised the Debt Due under its Financing Agreements.

34.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 34 shall be restricted to the effect of Change in Law during the

respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

34.5 No claim in the event of recovery from Buyers

Notwithstanding anything to the contrary contained in this Agreement, the Utility shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.

ARTICLE 35

LIABILITY AND INDEMNITY

35.1 General indemnity

35.1.1 The Supplier shall indemnify, defend, save and hold harmless the Utility and its officers, servants, agents, Government Instrumentalities and Utility owned and/or controlled entities/enterprises, (the “**Utility Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Supplier of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to the Utility or sale by the Supplier to any Buyer or from any negligence of the Supplier under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Utility Indemnified Persons.

35.1.2 The Utility shall indemnify, defend, save and hold harmless the Supplier against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights, if any, of the Utility in the land comprised in the Site, and/or (b) breach by the Utility of any of its obligations under this Agreement or any related agreement, which materially and adversely affects the performance by the Supplier of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Supplier, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Supplier.

35.2 Indemnity by the Supplier

35.2.1 Without limiting the generality of Clause 35.1, the Supplier shall fully indemnify, hold harmless and defend the Utility and the Utility Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Supplier to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Supplier in respect of the income or other taxes of the Supplier's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Supplier or any of its contractors which are payable by the Supplier or any of its contractors.

35.2.2 Without limiting the generality of the provisions of this Article 35, the Supplier shall

fully indemnify, hold harmless and defend the Utility Indemnified Persons

from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Utility Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Supplier or by the Supplier's Contractors in performing the Supplier's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Power Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Utility a licence, at no cost to the Utility, authorising continued use of the infringing work. If the Supplier is unable to secure such licence within a reasonable time, the Supplier shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

35.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4 Defence of claims

- 35.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior

written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

ARTICLE 36

DISPUTE RESOLUTION

36.1 Dispute resolution

- 36.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 36.2.
- 36.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

36.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Chairman of the Board of Directors of the Utility and the Chairman of the Board of Directors of the Supplier for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 36.3.

36.3 Arbitration

- 36.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 36.2, and is not adjudicated or referred to arbitration by the Commission, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 36.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration center for Alternative Dispute Resolution, as amended from time to time or any mutually agreed procedure (the “**Rules**”). The place of such arbitration shall be Chennai and the language of arbitration proceedings shall be English.
- 36.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two

⁴⁶ Retain one and strike out the remaining places.

arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

- 36.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 36 shall be final and binding on the Parties as from the date it is made, and the Supplier and the Utility agree and undertake to carry out such Award without delay.
- 36.3.4 The Supplier and the Utility agree that an Award may be enforced against the Supplier and/or the Utility, as the case may be.
- 36.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

36.4 Adjudication by the Commission

- 36.4.1 In the event a Dispute is required, under Applicable Laws, to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 36.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.
- 36.4.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 36.3 shall be followed to the extent applicable.

36.5 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 36.3 and 36.4 respectively, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 37

DISCLOSURE

37.1 Disclosure of Specified Documents

The Supplier shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Supplier’s Registered Office and the Power Station and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

37.2 Disclosure of Documents relating to safety

The Supplier shall make available for inspection, by any person, copies of all Documents and data relating to safety of the Power Station, free of charge, during normal business hours on all working days, at the Supplier’s Registered Office and the Power Station. The Supplier shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

37.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 37.1 and 37.2, but subject to Applicable Laws, the Utility shall be entitled to direct the Supplier, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 37.1 and 37.2, or portions thereof, the disclosure of which the Utility is entitled to withhold under the provisions of the Right to Information Act, 2005.

The expression “any person” for the purpose of this Article shall mean the person authorized by the Utility.

ARTICLE 38

MISCELLANEOUS

38.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State of Tamil Nadu shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

38.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

38.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Supplier in the Project Assets shall be deemed to be acquired and owned by the Supplier. For the avoidance of doubt, the Utility shall not in any manner be liable in respect of any claims for depreciation to be made by the Supplier under Applicable Laws.

38.4 Delayed payments

- 38.4.1 The Parties hereto acknowledge and agree that the Electricity (Late Payment Surcharge and related Matters) Rules 2022 (“**LPS Rules**”) shall be applicable. In the event of payments due from one Party to the other Party beyond the Payment Due Date, a Late Payment Surcharge (“**LPS**”) shall be payable by the defaulting party on the outstanding payments beyond the Payment Due Date. The rate of LPS

for the first month of default as well as for successive months of default will be calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. If the period of default lies in two or more financial years, the base rate of LPS shall be calculated separately for the periods falling in different years.

38.4.2 Omitted.

38.5 Waiver

38.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

38.5.2 Neither the failure by either Party to insist, on any occasion, upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

38.6 Liability for review of Documents and drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Utility or the Utility's Engineer of any Project Agreement, Document or drawing submitted by the Supplier nor any observation or inspection of the construction, operation or maintenance of the Power Station nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Supplier from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Utility shall not be liable to the Supplier by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

38.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a

binding legal agreement executed by both Parties.

38.8 Survival

38.8.1 Termination shall:

- (a) not relieve the Supplier or the Utility, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 35; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

38.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

38.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Supplier arising from the Request for Qualification -DBFOO or Request for Proposal -DBFOO, as the case may be, shall be deemed to form part of this Agreement and treated as such.

38.10 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

38.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf

of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

38.12 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

38.13 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

38.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Supplier, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Supplier may from time to time designate by notice to the Utility; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Supplier may from time to time designate by notice to the Utility.

{Attention:
Designation:
Address:
Fax No:
Email:}

- (b) in the case of the Utility, be given by facsimile or e-mail and by letter delivered by hand at the address given below and marked to the attention of the person set out below with a copy delivered to the Utility Representative or such other person as the Utility may from time to time designate by notice to the Supplier; provided that if the Supplier does not have an office in the same city as the Utility, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

{Name:
Designation:
Address:
Fax No:
Email:} ; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

38.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

38.16 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 39

DEFINITIONS

39.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Act” means the Electricity Act, 2003;

“Additional Fuel Supply Arrangement” or **AFSA**” shall have the meaning as set forth in Clause 22.9.1;

“Affected Party” shall have the meaning as set forth in Clause 28.1;

“Agreement” or **“Power Supply Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Allocated Coal Linkage” shall mean [Insert coal linkage arranged by Utility]]⁴⁷

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Power Station during the subsistence of this Agreement;

“Appointed Date” means the date on which all the Conditions Precedent are achieved, and every Condition Precedent is either satisfied or waived , as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

“Approved Route” shall have the meaning as set forth in Clause 22.2.1.

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modification to or any re-enactment thereof, as in force from time to time;

“As Delivered Price” means the source specific price of CIL or its Subsidiaries at the loading point of the mine with all applicable taxes, levies and add-ons (surface transportation charges, sizing/crushing charges, rapid loading charges, and any other applicable charges of CIL/Subsidiaries) and shall not include any compensation for Short-

delivery/short lifting and penalty/interest for delayed payments by the Supplier to Fuel Supplier.

“Associate” or “Affiliate” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“Availability” shall have the meaning as set forth in Clause 5.1.4 and the term **“Available”** shall be construed accordingly;

“Average Daily Availability” means the Availability, in terms of percentage, determined for the month preceding the relevant Force Majeure Event;

“Average Daily Fixed Charge” means the amount arrived at by dividing the total Fixed Charge due and payable for the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Fixed Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fixed Charge due and payable with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fixed Charge payable for any segment of the Power Station has not been realised for any reason, an assessment thereof shall be made by the Utility to form part of the Average Daily Fixed Charge for such period;

“Average GCV” shall have the meaning as set forth in clause 22.3.1;

“Bank” means a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Base Fixed Charge” shall have the meaning as set forth in Clause 21.2.1;

“Base Year” means the Accounting Year in which the Bid Date occurred;

“Bid” means the documents in their entirety comprised in the Bid submitted by the selected Bidder in response to the Request for Proposal -DBFOO in accordance with the provisions thereof and **“Bids”** shall mean the Bids submitted by any and all qualified Bidders;

“Bid Date” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal-DBFOO;

“Bid Security” means the security provided by the Supplier to the Utility along with the Bid, in a sum of Rs. **** crore (Rupees **** crore)in accordance with the Request for Proposal-DBFOO, and which is to remain in force until substituted by the Performance Security;.

“Buyer(s)” shall mean the third parties buying electricity from the Power Station, in accordance with the provisions of this Agreement and Applicable Laws;

“CIL” means Coal India Limited or any subsidiary thereof, and shall include any substitute or successor thereof;

“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 14.1.1;

“Capacity Charge” shall have the meaning as set forth in Clause 21.4.4;

“Change in Law” means any enactment or amendment or repeal of any law, made after 7 days prior to Bid Due Date, leading to corresponding changes in the cost requiring change in tariff, and includes

- i. a change in interpretation of any law by a competent court; or
- ii. a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the cost; or
- iii. a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost,
- iv. incurrence of any cost to the Supplier towards purchase of any additional land required for development of the Project but does not include
 - A. any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee; or
 - B. change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission; Law includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline below 100% (hundred per cent) till COD and below 51% (Fifty One per cent) for the period of 3 (three) years following COD, and below 26% (twenty six per cent) from 4th year following COD upto 10th year following COD, or such lower proportion as may be permitted by the Utility upon substitution of the promoters of the Supplier by an entity having sufficient financial and technical capacity to discharge the obligations of the Supplier under this Agreement;

“Commission” means the Tamil Nadu Electricity Regulatory Commission (“TNERC”) or any successor thereof duly constituted under the Act;

“;

“Company” means the company acting as the Supplier under this Agreement;

“Completion Certificate” shall have the as meaning set forth in Clause 13.2.1;

“Conditions Precedent” shall have the meaning as set forth in Clause 4.1.1;

“Construction Period” means the period beginning from the Appointed Date and ending on COD;

“Construction Works” means all works, equipment and things necessary to complete the Power Station in accordance with this Agreement;

“Contract Period” means the period starting on and from the Appointed Date and ending on the earlier of the 34th (thirty four years) anniversary of the Appointed Date and the date of termination of the Agreement;

“Contracted Capacity” shall have the meaning as set forth in Clause 18.2;

“Contractor” means the person or persons, as the case may be, with whom the Supplier has entered into any of the Fuel Supply Agreement, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Power Station or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Supplier;

“Cumulative Availability” means availability from the day of COD or first day of the relevant Accounting Year, whichever is later, up to and including last day of the Month for which Monthly invoice is being submitted.

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Supplier requires any reasonable action by the Supplier that must be approved by the Utility hereunder, the applicable Cure Period shall be extended by the period taken by the Utility to accord its approval;

“DBFOO” or **“Design, Build, Finance, Own and Operate”** shall have the meaning as set forth in Recital (A);

“Damages” shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“Debt Due” shall mean the aggregate of the following, expressed in Indian Rupees, outstanding on the relevant date: (a) the principal amount under the Financing Agreements

and (b) Interest on Debt.

Provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of computation of Debt Due;

“Deed of Hypothecation” shall have the meaning as set forth in Clause 23.1.2;

“Default Escrow Account” shall have the meaning as set forth in Clause 23.1.1;

“Default Escrow Agreement” shall have the meaning as set forth in Clause 23.1.1;

“Default Escrow Bank” shall have the meaning as set forth in Clause 23.1.1;

“Despatch” shall have the meaning as set forth in Clause 24.1.1;

“Dispute” shall have the meaning as set forth in Clause 36.1.1;

“Disputed Amounts” shall have the meaning as set forth in Clause 21.10.3;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 36;

“Distribution Licensee” means a person who has been granted a licence under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee;

“Divestment Requirements” means the obligations of the Supplier for and in respect of Termination as set forth in Clause 32.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“DSM Regulations” means the TNERC (Deviation Settlement Mechanism and Related Matters) Regulation, 2019, along with its amendments or any substitute thereof;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Power Station, including Buyers thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Power Station, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Power Station, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Supplier for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other

similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning as set forth in Schedule-P;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of the Power Station and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

“Financing Agreements” means the agreements executed by the Supplier in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“Fixed Charge” shall have the meaning as set forth in Clause 21.1.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 28.1;

“Forced Outage” means an outage of the Power Station due to a fault or any other reason which was not anticipated and includes any trippings, breakdown or unscheduled shutdown and an Emergency;

“Fuel Charge” shall have the meaning as set forth in Clause 22.2.1;

“Fuel” means the coal which is fit for use in generation of electricity at the Power Station;

“Fuel Shortage” shall have the meaning as set forth in Clause 22.8.1;

“Fuel Supply Agreement” or **“FSA”** shall have the meaning as set forth in Clause 22.4.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in

the performance of its obligations by the Supplier in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Power Station and for providing safe, economic, reliable and efficient supply of electricity;

“Government” means the Government of India or the Government of the State, as the case may be;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Power Station or the performance of all or any of the services or obligations of the Supplier under or pursuant to this Agreement;

“Grid” means the high voltage backbone system of inter-connected transmission lines and sub-stations;

“Grid Code” means the Indian Electricity Grid Code 2010 or any substitute thereof;

“Gross Calorific Value” or “GCV” means the heat produced in kCal by complete combustion of one kilogram of coal expressed in kCal per Kg;

“Incentive” means a payment due to the Supplier, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

“Incomplete Works” shall have the meaning as set forth in Clause 13.3.1;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 35;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 35;

“Indexed Fixed Charge” shall have the meaning as set forth in Clause 21.3;

“Indirect Political Event” shall have the meaning as set forth in Clause 28.3;

“Installed Capacity” shall have the meaning as set forth in Clause 18.1;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Supplier pursuant to Article 26, and includes all insurances required to be taken out by the Supplier under Clause 26.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Key Performance Indicators” shall have the meaning as set forth in Clause 17.1;

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (D);

“Landed Fuel Cost” shall have the meaning as set forth in Clause 22.2.2;

“Late Payment Surcharge” shall have the meaning as set forth in Clause 21.15;

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Letter of Credit” shall have the meaning as set forth in Clause 23.2.1;

“Linkage Coal” shall mean the coal linkage provided by Coal India Limited at notified price for regulated sector of thermal power;

“Maintenance Manual” shall have the meaning as set forth in Clause 15.3.1;

“Maintenance Programme” shall have the meaning as set forth in Clause 15.4.1;

“Maintenance Requirements” shall have the meaning as set forth in Clause 15.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Minimum Fuel Stock” shall have the meaning as set forth in Clause 22.7;

“Maximum Monthly Payment” shall have the meaning as set forth in Clause 23.1.1;

“Minimum Monthly Payment” shall have the meaning as set forth in Clause 23.1.3;

“Mis-declaration” shall have the meaning as set forth in Clause 21.5.5;

“Monthly Invoice” shall have the meaning as set forth in Clause 21.10.1;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Utility for substituting the Supplier in accordance with the provisions of the Substitution Agreement;

“Non-Availability” means any partial or total lack of Availability on account of Scheduled Maintenance or Unscheduled Maintenance or for any other reason, save and except to the extent arising out of an event described in Clause 15.8;

“Non-Political Event” shall have the meaning as set forth in Clause 28.2;

“Normative Availability” shall have the meaning as set forth in Clause 5.1.4;

“O&M” means the operation and maintenance of the Power Station and includes all matters connected with or incidental to such operation and maintenance, and provision of generating and transmission services and facilities in accordance with the provisions of this Agreement;

“O&M Contractor” means the person, if any, with whom the Supplier has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Supplier;

“O&M Expenses” means expenses incurred by or on behalf of the Supplier or by the Utility, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 27.2.1;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

“Payment Due Date” shall have the meaning as set forth in Clause 21.10.3;

“Performance Security” shall have the meaning as set forth in Clause 9.1.1;

“Point of Grid Connection” shall mean the switchyard bus bar of the Power Station;

“Political Event” shall have the meaning as set forth in Clause 28.4;

“Power Station” means the generating station to be developed with an Installed Capacity of 660 MW (1 x 660 MW) on the land admeasuring [*] located at Village Ernavur, Dist. Ennore - Thiruvallur, Tamil Nadu as described in Schedules A and B, Project Assets, Project Facilities, the allocation of Allocated Coal which is linked to or attached with the Project

“Project” means the construction, operation and maintenance of the Power Station in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Agreements” means the documents and agreement relating to Fuel tie up for the period as specified by the Utility;

“Project Assets” means all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Site in the form of licence or otherwise;
- (b) tangible assets such as civil works and equipment including foundations,

embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;

- (c) rights over Allocated Coal;
- (d) all rights of the Supplier under the Project Agreements;
- (e) financial assets, such as receivables, security deposits etc.;
- (f) insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Power Station;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-E for completion of the Power Station on or before the Scheduled Completion Date;

“Project Milestones” means the project milestones as set forth in Schedule-E;

“Provisional Certificate” shall have the meaning as set forth in Clause 13.3.1;

“Provisional Monthly Invoice” shall have the meaning as set forth in Clause 21.14;

“RLDC” means the Regional load Despatch Centre as specified in the Act;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Request for Proposal-DBFOO” or “RFP-DBFOO” shall have the meaning as set forth in Recital (C);

“Request for Qualification-DBFOO” or “RFP-DBFOO” shall have the meaning as set forth in Recital (B);

“Revenues” means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Utility in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Utility for and in relation to any capital expenditure for creation of assets;

“Revenue Share” means and refers to the share of revenue from unutilized Contracted Capacity to be paid by the Supplier to the Utility in accordance with the provisions of this Agreement;

“SLDC” means the State Load Despatch Centre as specified in the Act;

“Safety Requirements” shall have the meaning as set forth in Clause 15.13;

“Scheduled Completion Date” shall have the meaning as set forth in Clause 11.2.1;

“Scheduled Maintenance” shall have the meaning as set forth in Clause 15.4.2;

“Scope of the Project” shall have the meaning as set forth in Clause 2.1;

“Secured Obligations” means:

- (a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit;
- (b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this Agreement; and
- (c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Supplier under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Supplier;

“Site” shall have the meaning as set forth in Clause 10.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Power Station, as set forth in Schedule-C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Power Station submitted by the Supplier to, and expressly approved by, the Utility;

“State” means the State or the Union Territory, as the case may be, in which the Utility is situated and **“State Government”** means the government of that State or Union Territory, as the case may be;

“Station Heat Rate” shall have the meaning as set forth in Clause 22.1.1;

“Station Premises” shall have the meaning as set forth in Clause 10.1;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Supplier under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

“Sub-station” means a station for transforming or converting electricity for the transmission thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

“Substitution Agreement” shall have the meaning as set forth in Clause 33.3.1;

“Supplier” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Supplier Default” shall have the meaning as set forth in Clause 31.1.1;

“Supplementary Invoice” shall have the meaning as set forth in Clause 21.13.1;

“Supply Contract” shall have the meaning as set forth in Clause 3.1.1;

“Suspension” shall have the meaning as set forth in Clause 30.1;

“Tariff” shall have the meaning as set forth in Clause 21.1.1;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, Goods and Services Tax (GST), cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement and the Supply Contract hereunder;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable, by the defaulting party to the other party, under and in accordance with the provisions of this Agreement, upon Termination thereof;

“Tests” means the tests set forth in Schedule-F to determine the completion of Power Station in accordance with the provisions of this Agreement;

“Total Project Cost” means the capital cost incurred on construction and financing of the Contracted Capacity and shall be limited to the lower of:

- (a) the capital cost of the Contracted Capacity as set forth in the Financial Package; and
- (b) the actual capital cost of the Contracted Capacity upon completion of Construction;

“Transfer Date” means the date on which this Agreement and the Supply Contract hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“Unit” means a unit of the Power Station which is equipped with a turbine and associated facilities for generation of electricity at the Power Station;

“Unscheduled Maintenance” shall have the meaning as set forth in Clause 15.8;

“Utility” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“Utility Default” shall have the meaning as set forth in Clause 31.2.1;

“Utility’s Engineer” shall have the meaning as set forth in Clause 19.1;

“Utility Representative” means such person or persons as may be authorised in writing by the Utility to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Utility under this Agreement;

“Vesting Certificate” shall have the meaning as set forth in Clause 32.5; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge in accordance with the provisions of Clause 21.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year, which WPI may be substituted by such alternative index or indices as the Parties may by mutual consent determine.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED

2.

For and on behalf of
THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

THE COMMON

Officer who has countersigned the same in
token thereof[£]:

SEAL OF

SUPPLIER

has been affixed
pursuant to the
resolution passed by the
Board of Directors of
the Supplier at its
meeting held on the
..... day of 20.....
hereunto affixed in the
presence of
.....,
Director, who has signed
these presents in token
thereof and....., Company
Secretary / Authorised

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

Schedules

SCHEDULE – A
(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

Site of the Power Station shall include the land, buildings, structures as described in Annex-I of this Schedule A.

Annex - I
(Schedule-A)

Site for the Power Station

[**Note:** Through suitable drawings and description in words, the land, corridors for pipeline, roads, conveyor, ash ponds, housing colony for emergency staff, utilities and rail lines comprising the Site shall be specified briefly but precisely in this Annex-I.

Part A

Power Station

[**Note:** Through suitable drawings and description in words, the land, buildings and structures comprising the Power Station shall be described briefly but precisely.]

Part B

Line ROW

[**Note:** Through suitable description in drawings and words, the Line ROW for the Dedicated Transmission System shall be described briefly but precisely.]

Part C

Allocated Coal linkage

SCHEDULE – B
(See Clause 2.1)

DEVELOPMENT OF THE POWER STATION

1 Development of the Power Station

Development of the Power Station shall include construction of the Power Station as described in this Schedule-B.

2 Power Station

2.1 Power Station shall include construction of the Power Station as described in Annex-I of this Schedule-B.

2.2 Power Station shall be completed by the Supplier in conformity with the Specifications and Standards set forth in Annex-I of Schedule-C.

3 Omitted

Annex - I
(Schedule-B)

Description of Power Station

1 Capacity of the Power Station

- 1.1 The Power Station shall have a generating capacity of not less than 660 MW.
- 1.2 The configuration of Unit is given below:
 - (a) The number of Unit shall not exceed 1 (One)
 - (b) Omitted
- 1.3 The Station Heat Rate of the Power Station shall conform with the provisions of Schedule-C.

2 Dedicated communication

The Power Station shall have a dedicated communication linkage with the Utility.

3 Specifications and Standards

The Power Station shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-C.

4 Ramp Rates

The ramp rates of the Unit of the Power Station shall be in compliance with the relevant provisions of the Central Electricity Authority (Flexible Operation of Coal based Thermal Power Generating Units) Regulations, 2023.

- 5 The Unit of the Power Station shall have the capacity to ramp up from a cold start and reach full capacity within a period of 12 (twelve) hours from the time of each start.

Annex - II
(Schedule-B)

Omitted

SCHEDULE- C
(See Clause 2.1 and 24.4)

SPECIFICATIONS AND STANDARDS

1 Power Station

The Supplier shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-C for construction of the Power Station.

2 Station Heat Rate

- 2.1 The Station Heat Rate, reckoned at the Point of Grid Connection shall, after accounting for auxiliary consumption and transmission losses, not exceed [2,317 (two thousand three seventeen) kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR).
- 2.2 The Station Heat Rate of the Power Station shall be deemed to be higher in the event of reduction in generation below 80% (eighty per cent) of the Contracted Capacity. Such increase, as a proportion of the Station Heat Rate shall be deemed to be in accordance with the standard increase specified in Annex-III of this Schedule.

.

Annex - I
(Schedule-C)

Specifications and Standards for the Power Station

1 Specifications and Standards

Subject to the provisions of Paragraph 2 of this Annex-I, the Power Station shall conform with the provisions of Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electrical Lines) Regulations 2010, , as amended from time to time, and the Central Electricity Authority (Flexible Operation of Coal based Thermal Power Generating Units) Regulations, 2023, as amended from time to time which shall be deemed to be the Specifications and Standards

2 Additional Specifications and Standards

2.1 Notwithstanding anything to the contrary contained in this Agreement, the following additional Specifications and Standards shall apply to the Power Station, and for purposes of this Agreement, the aforesaid Specifications and Standards shall be deemed to be amended to the extent set forth below:

2.2 Omitted:

Annex - II
(Schedule-C)

Specifications and Standards for the Dedicated Transmission System

1 Specifications and Standards

The Dedicated Transmission System shall conform with the Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electrical Lines) Regulations 2010 (An authenticated copy of the same has been provided to the Supplier as part of the Bid Documents.)

Annex - III
(Schedule-C)

Station Heat Rate

1 Increase in Station Heat Rate

Subject to the provisions of Paragraph 2 of this Annex-III, in the event the Utility Dispatches the Power Station at a level lower than 80% (eighty per cent) of its entitlement in the Contracted Capacity, the SHR shall be deemed to be increased on a 15 (fifteen) minute time block basis as specified below.

Station Heat Rate at different levels of Despatch
(in %)

S. No.	Despatch of Utility's Contracted Capacity	Increase in SHR (for super-critical turbine)
1	85-100	Nil
2	75-84.99	1.25
3	65-74.99	2
4	55-64.99	3
5	45-54.99	4.5
6	35-44.99	7
7	25-34.99	10.5
8	15-24.99	14
9	5-14.99	19
10	Below 5	25

- 2** Notwithstanding anything to the contrary contained in this Annex-III, the benefit of an increase in SHR shall at all times be subject to an actual reduction in generation of electricity and in the event any reduction in Dispatch by the Utility is off-set by Dispatch to any other Buyer and deemed Dispatch equivalent to deemed availability due to non-availability arising due to deficiency in transmission system,, the benefit of an increase in SHR shall be computed only in respect of the remaining shortfall, if any. For the avoidance of doubt, it is clarified that any adjustment in SHR as per above shall be applied on a 15 minute time block basis.

3 Optimisation of SHR

The Supplier shall, following a reduction in Dispatches, back down the Unit or reduce generation therefrom in a manner that will optimise the SHR and reduce the Fuel charge. For this purpose, it shall comply with such instructions as the Utility may give from time to time.

SCHEDULE –D

(See Clause 9.1)

PERFORMANCE SECURITY

The.....,
Distribution Company
[State of....]

WHEREAS:

- (A)(the “**Supplier**”) and [the Distribution Company] represented by and having its principal offices at (“**Utility**”) have entered into a Power Supply Agreement dated ... (the “**Agreement**”) whereby the Utility has agreed to the Supplier undertaking the construction and operation of the Power Station with a generating capacity of MW in the State of on design, build, finance, own and operate (the “**DBFOO**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Supplier to furnish a Performance Security to the Utility in a sum of [Rs. cr. (Rupees crore)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, ... through our Branch at(the “**Bank**”) have agreed to furnish this E-Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Utility upon occurrence of any failure or default in due and faithful performance of all or any of the Supplier’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Supplier, such sum or sums upto an aggregate sum of the Guarantee Amount as the Utility shall claim, without the Utility being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Utility, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Supplier has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Utility shall be the sole judge as to whether the Supplier is in default in due and faithful performance of its obligations during the Contract Period under the Agreement and its decision that the Supplier is in default shall be final, and binding on the Bank, notwithstanding any differences between the Utility and the Supplier, or any dispute between them

pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Supplier for any reason whatsoever.

3. In order to give effect to this Guarantee, the Utility shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Supplier and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Utility to proceed against the Supplier before presenting to the Bank its demand under this Guarantee.
5. The Utility shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Supplier contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Utility against the Supplier, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Utility, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the Supplier or any other forbearance, indulgence, act or omission on the part of the Utility or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Utility in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Supplier under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Utility on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Utility under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Supplier shall have provided another Performance Security in substitution of this Performance Security and such substitution shall be repeated until the Performance Security has been released in accordance with the Clause 9.3 of PSA-DBFOO and provided the Supplier is not in breach of this Agreement. Upon request made by the Supplier for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Supplier, the Utility shall

release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Utility in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Utility that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of 48 (forty eight) months from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.
12. Notwithstanding anything to the contrary contained herein
 - i. Our liability under this Guarantee shall not exceed Rs. _ ... (Rupees ... only)
 - ii. This E-Bank Guarantee shall be valid up to [...] (being the date of expiry of the guarantee)
 - iii. The beneficiary's right as well the Bank's liability under this Guarantee shall stand extinguished unless a written claim or demand is made under this Guarantee on or before [...] (being the date of expiry of claim period)

Signed and sealed thisday of ..., 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Name)
(Designation)
(Code Number)

NOTES:

- (i) The E-bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank

as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE –E
(See Clause 11.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Supplier shall comply with the requirements set forth in this Schedule-E for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Supplier shall notify the Utility of such compliance along with necessary particulars thereof.

2 Project Milestone-I

1. Project Milestone-I shall occur on the date falling on the 180th (one hundred and eightieth) day from the Appointed Date (the “**Project Milestone-I**”).
2. Prior to the occurrence of Project Milestone-I, the Supplier shall have commenced construction of the Power Station and expended not less than 10% (ten per cent) of the Total Project Cost.

3 Project Milestone-II

1. Project Milestone-II shall occur on the date falling on the 550th (five hundred and fiftieth) day from the Appointed Date (the “**Project Milestone-II**”).
2. Prior to the occurrence of Project Milestone-II, the Supplier shall have expended not less than 40% (forty per cent) of the Total Project Cost.

4 Scheduled Completion Date

The Scheduled Completion Date for completion of the Contracted Capacity of the Power Station shall be the 48 (Forty Eight) months from the Appointed Date

5 Extension of period

Upon any extension of any or all of the Project Milestones or the Scheduled Completion Date, as the case may be, in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE-F
(See Clause 13.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Supplier shall, no later than 60 (sixty) days prior to the likely completion of the Unit(s) of the Power Station, notify the Utility's Engineer and the Utility of its intent to subject the Unit(s) of the Power Station to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Utility's Engineer and to the Utility particulars of all works and equipment forming part of the Unit(s) of the Power Station.
- 1.2 The Supplier shall, in consultation with the Utility's Engineer, determine the date and time for each Test and notify the same to the Utility who may designate its representative to witness the Tests.

2 Tests

In pursuance of the provisions of Clause 13.1.2 of this Agreement, Unit(s) of the Supplier shall carry out Tests for determining the compliance of the Power Station and Dedicated Transmission System with Specifications and Standards as specified in Paragraphs 3, 4 and 5 of this Schedule-F.

3 Power Station

3.1 Installed Capacity Test

The Supplier shall carry out or cause to be carried out, Tests specified in the Performance Test Code - 6 (PTC – 6) of American Society of Mechanical Engineers Standards (the “**ASME Standards**”) to determine the capacity of turbo-generators, which capacity shall be deemed as the Installed capacity of the Unit(s) of the Power Station and specified as such in the Provisional Certificate or Completion Certificate, as the case may be.

Provided that the Installed Capacity Tests for and in respect of a Unit shall be deemed to be unsuccessful in the event that the generating capacity of such Unit is less than 95% (ninety five per cent) of its name plate capacity comprising the Maximum Continuous Rating.

3.2 SHR Test

The Utility's Engineer shall carry out, or cause to be carried out, Tests specified in the Performance Testing Code - 4 (PTC – 4) and Performance Test Code - 6 (PTC – 6) of ASME Standards for boilers and turbines respectively, and Tests specified in other applicable codes in respect of associated equipment, to determine the Station Heat Rate at 100% (hundred per cent) maximum continuous rating (MCR) of the Power Station, after accounting for auxiliary consumption and losses on the Dedicated Transmission System, if any, and the Station Heat Rate shall be lower of SHR so determined after including 2% (two per cent) increase to account for potential variations arising from temperature, humidity,

quality of coal and other unforeseen factors and 2,317 kCal per kWh, and the number so arrived at shall be specified as the Station Heat Rate in the Provisional Certificate or Completion Certificate, as the case may be.

4 Omitted

5 Common Tests

5.1 Visual and physical Test

The Utility's Engineer shall conduct a visual and physical check of the Power Station to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

5.2 Tests for equipment:

Utility's Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of control equipment, signalling, telecommunication and metering equipment with Specification and Standards.

5.3 Trial run of Contracted Capacity:

A trial run of the Contracted Capacity shall be undertaken for a continuous period of 72 (seventy-two) hours for demonstrating the compliance of the Contracted Capacity with the provisions of this Agreement, including the design capacity of the Unit. The trial run shall be conducted or caused to be conducted by the Supplier in consultation with the Utility's Engineer, the SLDC and the RLDC, as the case may be. In the event that testing of any circuit/facility cannot be carried out up to the design capacity, for any reason not attributable to the Supplier, the Supplier shall provide adequate data and justification of its design capacity such as design data, calculations, extrapolation and simulation, to enable the Utility's Engineer to determine the compliance thereof with the provisions of this Agreement. For the avoidance of doubt, if any tripping occurs on account of reasons attributable to the Supplier, the Utility's Engineer may require the Supplier to repeat the trial run at the risk and cost of the Supplier.

⁶⁰ This figure may be substituted by 2,350 for all bids received on or before December 31, 2016 or where a Power Station shall have achieved COD prior to that date.

6 Agency for conducting Tests

All Tests set forth in this Schedule-F shall be conducted by the Supplier or such other agency or person as it may specify in consultation with the Utility's Engineer.

7 Completion/Provisional Certificate

Upon successful completion of Tests, the Supplier shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 13.

8 Tests during construction

Without prejudice to the provision of this Schedule-F, tests during construction shall be conducted in accordance with the provisions of Clause 13.1.1.

SCHEDULE –G
(See Clauses 13.2 & 13.3)

COMPLETION CERTIFICATE

1. I/We,(Name and Designation of the representative of the Utility Engineer), acting as the Utility Engineer, under and in accordance with the Power Supply Agreement dated (the “**Agreement**”), for construction of the Power Station with an Installed capacity of MW on design, build, finance, own and operate (the “**DBFOO**”) basis, hereby certify that the Tests specified in Article 13 and Schedule-F of the Agreement have been successfully undertaken to determine compliance of Unit of the Power Station with the provisions of the Agreement, and I/We am/are satisfied that Unit of the Power Station can be safely and reliably placed in commercial service of the Utility.
2. It is certified that the Power Station/Unit has an Installed Capacity of MW which includes the Contracted Capacity of MW.
3. It is further certified that the Station Heat Rate of the Power Station is
4. It is also certified that, in terms of the aforesaid Agreement, all works forming part of the Power Station/Unit have been completed, and the Power Station / Unit is ready for entry into commercial operation on this the ...day of ...20...

SIGNED, SEALED AND DELIVERED
For and on behalf of
the UTILITY
ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name and Designation of the representative of the Utility Engineer), acting as the Utility Engineer, under and in accordance with the Power Supply Agreement dated (the “**Agreement**”), for construction of the Power Station with a capacity of MW on design, build, finance, own and operate (the “**DBFOO**”) basis, hereby certify that the Tests specified in Article 13 and Schedule-F of the Agreement have been undertaken for the Power Station/Unit of the Power Station to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Power Station/Unit of the Power Station that were found to be incomplete and/or deficient have been specified in the list of Incomplete Works appended hereto. I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Power Station/Unit of the Power Station, pending completion thereof.
- 3 It is certified that the Power Station/Unit of the Power Station has an Installed Capacity of which includes the Contracted Capacity of MW.
- 4 Omitted
5. In view of the foregoing, I/We am/are satisfied that the Power Station/Unit of the Power Station can safely and reliably enter into commercial operation on this the day of 20....

:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
the UTILITY
ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)

SCHEDULE – H
(See Clause 15.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Supplier shall, at all times, operate and maintain the Power Station in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Supplier shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-H (the “**Maintenance Requirements**”).
- 1.2 The Supplier shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-H within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Utility shall take action as deemed necessary, without prejudice to the rights of the Utility under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

The obligations of the Supplier in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the manner and within the time limit expected of a prudent and diligent power producer in accordance with Good Industry Practice.

3 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-H, if any defect, deficiency or deterioration in the Power Station poses a hazard to safety or risk of damage to property, the Supplier shall promptly take all reasonable measures for eliminating or minimising such danger.

4 Periodic inspection by the Supplier

The Supplier shall, through its engineer, undertake a periodic visual inspection of the Power Station in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner is required as per Good Industry Practice. Such record shall be kept in safe custody of the Supplier and shall be open to inspection by the Utility at any time during office hours.

SCHEDULE –I
(See Clause 19.1)

APPOINTMENT OF UTILITY’S ENGINEER

1 Appointment of Utility’s Engineer

1.1 The provisions of the Standard Request for proposal-DBFOO for selection of Technical Consultants, issued by the Ministry of Finance vide O. M. No. 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of a Utility’s Engineer. Provided, however, that no entity which is owned or controlled by the Utility shall be eligible for appointment as the Utility’s Engineer hereunder.

1.2 In the event of termination of a Utility’s Engineer appointed in accordance with the provisions of Paragraph 1.1, the Utility shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-I.

2 Terms of Reference

The Terms of Reference for the Utility’s Engineer shall substantially conform with Annex-I of this Schedule-I.

3 Fee and expenses

The fees, costs and expenses of the Utility’s Engineer shall be borne by the Utility.

4 Period of Contract of Utility’s Engineer

The Utility Engineer shall be appointed for the total Construction Period.

5 Appointment of government entity as Utility’s Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Utility may in its discretion appoint a government-owned entity as the Utility’s Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Utility’s Engineer.

Annex - I
(Schedule-I)

Terms of Reference for Utility's Engineer

1 Scope

- 1.1 These Terms of Reference for the Utility's Engineer (the "**TOR**") are being specified pursuant to the Power Supply Agreement dated ... (the "**Agreement**"), which has been entered into between the Utility and ... (the "**Supplier**") for the Power Station with a capacity of MW in the State of on design, build, finance, own and operate (the "**DBFOO**") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, of the Power Station.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Utility's Engineer

- 3.1 The role and functions of the Utility's Engineer shall include the following:
- (i) review of the Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
 - (iii) observe Tests as set forth in Paragraph 4;
 - (iv) Omitted
 - (v) Omitted
 - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (viii) assisting the Parties in resolution of Disputes as set forth in Paragraph 8;
and
- (ix) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Utility's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Construction Period

4.1 The Utility's Engineer shall undertake a review of the Documents to be furnished by the Supplier for construction of the Power Station and send its comments/observations to the Utility and the Supplier within 15 (fifteen) days of receipt of such Documents. In particular, such comments shall specify the conformity or otherwise of such Documents with the Scope of the Project and Specifications and Standards. The Utility's Engineer shall review any modified Documents sent to it by the Supplier in pursuance thereof and furnish its comments within 7 (seven) days of receiving such Documents.

4.2 The Utility's Engineer shall review the monthly progress report furnished by the Supplier and send its comments thereon to the Utility and the Supplier within 7 (seven) days of receipt of such report.

4.3 The Utility's Engineer shall inspect the Construction Works and equipment once every quarter, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Utility's Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Power Station or in the equipment. The Utility's Engineer shall send a copy of its Inspection Report to the Utility and the Supplier within 7 (seven) days of the inspection.

4.4 The Utility's Engineer may inspect the Power Station more than once in a quarter if any lapses, defects or deficiencies require such inspections.

4.5 The Utility's Engineer shall observe all the Tests specified in Schedule-F prior to issue of Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.5 and all matters incidental thereto, the Utility's Engineer shall act under and in accordance with the provisions of Article 13 and Schedule-F.

5 Omitted

6 Termination

Upon Termination, the Utility's Engineer shall, in the presence of a representative of the Supplier, inspect the Power Station for determining compliance by the Supplier with the Divestment Requirements.

7 Determination of costs and time

7.1 The Utility's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

7.2 The Utility's Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Assistance in Dispute resolution

8.1 When called upon by either Party in the event of any Dispute, the Utility's Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the

Agreement, the Utility's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9 Other duties and functions

The Utility's Engineer shall perform all other duties and functions specified in the Agreement.

10 Miscellaneous

- 10.1 The Utility's Engineer shall notify its programme of inspection to the Utility and to the Supplier, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 10.2 A copy of all communications, comments, instructions, Documents sent by the Utility's Engineer to the Supplier pursuant to this TOR, and a copy of all the test results with comments of the Utility's Engineer thereon shall be furnished by the Utility's Engineer to the Utility forthwith.
- 10.3 The Utility's Engineer shall obtain, and the Supplier shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Supplier to the Utility's Engineer, whereupon the Utility's Engineer shall send 1 (one) of the copies to the Utility along with its comments thereon and retain the other copy to be kept in its safe custody.
- 10.4 Upon completion of its assignment hereunder, the Utility's Engineer shall duly classify and list all Documents, results of tests and other relevant records, and hand them over to the Utility or such other person as the Utility may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Utility.
- 10.5 Wherever no period has been specified for delivery of services by the Utility's Engineer, it shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE – J
(See Clause 23.1.1)

DEFAULT ESCROW AGREEMENT

THIS DEFAULT ESCROW AGREEMENT is entered into on this the ... day of ... 20...

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956 / 2013 and having its registered office at (hereinafter referred to as the **“Supplier”** which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);
2. (insert name and particulars of the Default Escrow Bank), through its branch, and having its registered office at (hereinafter referred to as the **“Default Escrow Bank”** which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. The Distribution Company represented by and having its principal offices at (hereinafter referred to as the **“Utility”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Utility has entered into a power supply agreement dated ... with the Supplier (the **“Power Supply Agreement”**) for supply of..... MW of electricity from the Power Station at in the State of, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Utility’s payment obligations to the Supplier under the Power Supply Agreement, the Utility is required to establish a default escrow account on the terms and conditions stated therein (the **“Default Escrow Account”**).

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Cure Period” means the period specified in this Agreement for curing any

breach or default of any provision of this Agreement by the Utility, and shall commence from the date on which a notice is delivered by the Supplier to the Utility asking the latter to cure the breach or default specified in such notice;

“Default Escrow Account” shall have the meaning set forth in Recital B of this Agreement;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually;

“Power Supply Agreement” shall have the meaning set forth in Recital A of this Agreement;

“Security” shall have the meaning set forth in Clause 3.1;

“Utility Account” shall have the meaning set forth in Clause 2.4;

“Utility Escrow Default” shall have the meaning set forth in Clause 8.1;

“Utility’s Lenders” means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Utility and who have, for the repayment and/or discharge of obligations of the Utility been provided security by way of a charge on the Revenues of the Utility, as specified in Annex-I hereto.

1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Power Supply Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Power Supply Agreement.
- 1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Power Supply Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

- 2.1.1 The Utility hereby appoints the Default Escrow Bank to act as trustee for the Supplier and the Utility in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Utility hereby declares that all rights, title and interest in and to the Default

Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Supplier and the Utility, and applied in accordance with the terms of this Agreement. No person other than the Supplier and the Utility shall have any rights hereunder as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Utility pursuant to the provisions of this Agreement and the Power Supply Agreement. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Utility with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Supplier and the Utility, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Utility shall open and establish the Default Escrow Account with the ... (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.
- 2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Default Escrow Bank and the Utility shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Utility Account

The Default Escrow Bank and the Utility acknowledge that at least 30% (thirty per cent) of the Utility's total monthly Revenues are being deposited in the Utility's existing account at the Default Escrow Bank (the "**Utility Account**"), and the Utility undertakes to maintain the Utility Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Utility. For the avoidance of doubt, the Default Escrow Bank shall be

entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Power supply Agreement, the rights of the Supplier and the Utility in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

2.7 Substitution of the Supplier

The Parties acknowledge and agree that upon substitution of the Supplier with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Supplier under this Agreement with effect from the date of substitution of the Supplier with the Nominated Company.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Utility expressly agrees that it shall, prior to the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Supplier on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the “Security”).

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Utility Account from the Utility Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Utility and the Supplier, no later than the 15 (fifteen) days from the end of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Utility Escrow Default and until delivery of notice that the Utility Escrow Default is no longer continuing, the Default Escrow Bank shall provide statement of accounts to the Utility and the Supplier on a daily basis.

3.4 Protection of Supplier's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Supplier hereunder and the Security afforded to it herein for the full and timely performance by the Utility of the

Secured Obligations in the manner contemplated under this Agreement and the Power Supply Agreement.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Utility upon a certificate signed by or on behalf of the Utility;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall within 5 (five) business days after receipt, deliver a copy to the Supplier of any notice or document received by it from the Utility in connection herewith; and
- (d) shall within 5 (five) business days after receipt, deliver a copy to the Utility of any notice or document received by it from the Supplier in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4 OBLIGATIONS OF THE UTILITY

4.1 General

- 4.1.1 The Utility covenants with the Supplier and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Power Supply Agreement and this Agreement.
- 4.1.2 The Utility hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Utility Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.
- 4.1.3 The Utility agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Supplier, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Supplier.

4.2 Creation of Charge

- 4.2.1 The Utility hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Supplier over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Utility further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Utility's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Utility's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Supplier pursuant to the Deed of Hypothecation. The Utility expressly agrees that it shall procure and ensure that the rights of the Supplier hereunder are not prejudiced in any manner whatsoever.
- 4.2.2 The Utility agrees and undertakes to provide such other documents, certificates and agreements as the Supplier or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Supplier in accordance with Clause 4.2.1.
- 4.2.3 The Utility may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Supplier over the Revenues routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Supplier for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Utility in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Utility Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Utility from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

5.1.1 All amounts deposited in the Utility Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.

5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Utility or the Supplier may bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Utility

The Utility and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Utility Account, without any further authorisation or instructions from the Utility, funds aggregating an amount equal to the Maximum Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Utility irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Utility Account to the Default Escrow Account on a monthly basis, an amount equal to the Maximum Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Operation Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to

the Minimum Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Utility.

5.5 Drawal against Letter of Credit

- 5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Power Supply Agreement, the Supplier may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.
- 5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 Withdrawals upon Termination

- 5.6.1 Upon Termination of the Power Supply Agreement, if the Utility fails to make the Termination Payment due and payable to the Supplier within a period of 30 (thirty) days from the date of demand by the Supplier under and in accordance with the provisions of the Power Supply Agreement, the Supplier may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.
- 5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Supplier under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Maximum Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Power Supply Agreement.
- 5.6.3 The Utility expressly acknowledges and agrees that upon Termination of the Power Supply Agreement, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Utility Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon, have been paid in full. For the avoidance of doubt, the Utility agrees that it shall not take any actions inconsistent with the instructions given

hereunder by the Supplier or interfere in any way with the transfer of funds into

the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier and the Default Escrow Bank as of the date of this Agreement and at all times that:

- (a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Utility, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Utility, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by the Utility have been duly authorized by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or
 - (ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Utility, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;
- (f) on and after the date of execution of the Deed of Hypothecation, the Utility Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;

- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;
- (i) the particulars relating to the Utility's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and
- (j) at least 30% (thirty per cent) of the Utility's total monthly Revenues are deposited in the Utility Account every month and shall continue to be deposited in the Utility Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Utility and the Supplier as of the date of this Agreement and at all times that:

- (a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at and its branch among others, at ... and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or

- (ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Utility routed through the Default Escrow Account in favour of any other person other than the Supplier, save and except those created in favour of the Utility's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Default Escrow Bank and the Utility that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Supplier has been duly authorized by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or
 - (ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and
- (d) there are no actions, suits or proceedings pending or threatened, against or affecting the Supplier before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Supplier to perform its duties and obligations under this Agreement.

7. UTILITY'S COVENANTS

7.1 The Utility covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;

- (b) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;
- (c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation, in favour of the Supplier, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;
- (d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:
 - (i) the execution, delivery, performance and observance by the Utility of this Agreement;
 - (ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and
 - (iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;
- (e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Agreement and the Deed of Hypothecation;
- (f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and
- (g) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8 UTILITY ESCROW DEFAULT

8.1 Utility Escrow Default

Following events shall constitute an event of default by the Utility (a “**Utility Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Supplier:

- (a) the Utility commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in

any month into the Utility Account as provided herein and fails to cure such breach by depositing the same into the Utility Account within a period of 5 (five) business days thereof;

- (b) the Utility does not deposit or cause to be deposited an amount equal to the Maximum Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.
- (c) the Utility causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;
- (d) the Utility commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;
- (e) the Utility fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (f) any representation or warranty made by the Utility in this Agreement shall be or shall have been incorrect in any material respect;
- (g) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Utility to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;
- (h) the Supplier is unable to draw on the Letter of Credit pursuant to the failure of the Utility to establish the Letter of Credit in accordance with the Power Supply Agreement; and
- (i) the Utility commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Utility in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Utility may, by no less than 60 (sixty) days prior notice to the Default Escrow

Bank and the Supplier, terminate this Agreement and appoint a successor Default

Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Supplier. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Utility and the Supplier resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Utility and the Supplier shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Utility and the Supplier. Provided that if a successor bank acceptable to the Supplier is found within a shorter period, the Supplier and Utility may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

- (i) cease therewith accepting any payments or deposits into the Default Escrow Account;
- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Supplier;
- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within 30 (thirty) days of such closing, provide to the Utility and the Supplier a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon

completion of the procedure set forth in Clause 9.4 to the satisfaction of the Supplier.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Utility and the Supplier, made on or after the payment by the Utility of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Utility. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Utility shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

- 11.1.1 The Utility will indemnify, defend and hold the Supplier and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Agreement or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.
- 11.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Utility's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.
- 11.1.3 The Default Escrow Bank will indemnify, defend and hold the Utility and the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Utility or Supplier's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration center for Alternative Dispute Resolution (the “**Rules**”) or such other rules as may be mutually agreed by the Parties.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [Chennai] and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have jurisdiction over all matters arising out of or relating to this Agreement.

13.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

13.3 Priority of agreements

In the event of any conflict between the Power Supply Agreement and this Agreement, the provisions contained in the Power Supply Agreement shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

13.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

13.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED
THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

THE COMMON SEAL OF SUPPLIER
has been affixed pursuant to the resolution
passed by the Board of Directors of the
Supplier at its meeting held on the
day of 20..... hereunto affixed in the
presence of, Director, [who has
signed these presents in token thereof and
....., Company Secretary / Authorised
Officer who has countersigned the same in
token thereof][£]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED
AND
DELIVERED
For and on behalf of
THE DEFAULT
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED
AND
DELIVERED

For and on behalf of

THE UTILITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

Annex- I
(Schedule-J)
Utility's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

SCHEDULE – K
(See Clause 23.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this theday of 20....

BETWEEN

1. Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at ... (hereinafter referred to as the “**Supplier**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. The Distribution Company represented by and having its principal offices at (hereinafter referred to as the “**Utility**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Utility has entered into a power supply agreement dated with the Supplier (the “**Power Supply Agreement**”) for supply of MW of electricity from the Power Station at in the State of , and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Utility’s payment obligations to the Supplier under and in accordance with the Power Supply Agreement, the Utility is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.
- (C) To further secure the Secured Obligations, the Utility has agreed to grant a charge and security interest in favour of the Supplier on the Utility’s right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Deed**” means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

“**Default Escrow Agreement**” shall have the meaning set forth in Recital B of this Deed;

“**Hypothecated Interest**” shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

“**Power Supply Agreement**” shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Power Supply Agreement or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Power Supply Agreement or the Default Escrow Agreement, as the case may be.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Power Supply Agreement shall apply, *mutatis mutandis*, to this Deed.

2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Supplier having entered into the Power Supply Agreement and agreeing to make available to the Utility the Contracted Capacity, subject to the terms and conditions set out in the Power Supply Agreement, the Utility hereby covenants with the Supplier that it shall pay to the Supplier all the Secured Obligations in the manner set out in the Power Supply Agreement.

2.2 Creation of Charge

- 2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Power Supply Agreement, the Utility, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Supplier, all right, title, interest, benefit, claims and demands whatsoever of the Utility in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the “**Hypothecated Interest**”).
- 2.2.2 The charge created pursuant to this Clause 2.2 by the Utility over the Hypothecated Interest in favour of the Supplier is a floating charge and it shall not hinder the Utility from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in

Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Utility Escrow Default.

- 2.2.3 At any time after a Utility Escrow Default occurs and is continuing, the Supplier shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Power Supply Agreement.
- 2.2.4 Following the occurrence of a Utility Escrow Default, the Supplier shall not, save and except as may be required under the Power Supply Agreement, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:
- (a) take action or obtain judgement or any arbitration award against the Utility in any court or before any arbitrator;
 - (b) make or file any claim or proof in a winding up or dissolution of the Utility; and
 - (c) exercise any legal remedies, which may be available to it under or in respect of the Power Supply Agreement.

2.3 Release of Charge

- 2.3.1 Upon termination of the Power Supply Agreement in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.
- 2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Supplier shall, at its own costs and expense, forthwith:
- (a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;
 - (b) re-assign, retransfer or re-convey to the Utility, or as it may direct, the Hypothecated Interest; and
 - (c) execute all such documents and do all such other acts as may be required by the Utility in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3 FURTHER ENCUMBRANCES

- 3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Utility shall not, without the prior written consent of the Supplier, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Utility, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.

- 3.2 The Utility shall be entitled to create a subordinate/second charge in favour of the Utility's Lenders or any other entity over the Hypothecated Interest, provided, however, that the Utility shall procure and ensure that the rights of the Supplier under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Utility

The Utility hereby represents and warrants to the Supplier as of the date of this Deed and at all times that:

- (a) the Utility is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;
- (c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Supplier;
- (d) based on available records, the Revenues are believed by the Utility to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Utility and the Utility has full right and interest in the Revenues;
- (e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Utility or the ability of the Utility to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;
- (f) the execution, delivery and performance of this Deed by the Utility have been duly authorised by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Utility, its assets or its business; or
 - (ii) the Utility's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Utility routed

through the Default Escrow Account after the date hereof, except as permitted under this Deed;

- (h) as of the date hereof and until the expiry of this Deed, the Utility Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Utility routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1; and
- (i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Supplier

The Supplier hereby represents and warrants to the Utility that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;
- (b) this Deed constitutes the valid, legal and binding obligations of the Supplier enforceable in accordance with the terms of this Deed; and
- (c) the execution, delivery and performance of this Deed by the Supplier has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Supplier, its assets or its business; or
 - (ii) the Supplier's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. UTILITY'S COVENANTS

5.1 The Utility covenants that during the term of this Deed:

- (a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Supplier on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;

- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Supplier to have the full benefit of this Deed;
- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Utility's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Utility routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Supplier, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Utility, in connection with:
 - (i) the execution, delivery, performance and observance by the Utility of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;
- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Utility of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;
- (h) it shall inform the Supplier of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;
- (i) deposit or cause to be deposited in the Utility Account the Revenues immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of a Utility Escrow Default, deliver to the Supplier (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

The Utility shall, from time to time, upon the request of the Supplier, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Supplier) as the Supplier may reasonably require in order that the Supplier may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Utility will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Utility of any of its obligations under this Deed or on account of failure of the Utility to comply with Applicable Laws and Applicable Permits.

7.1.2 The Supplier will indemnify, defend and hold the Utility harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Supplier to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Utility's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Supplier, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

- (a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and

- (b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Supplier for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Supplier by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

- (a) any time or other indulgence given or agreed to be given by the Supplier to the Utility or to any other party providing Security for the Secured Obligations;
- (b) any amendment to the Power Supply Agreement or the Default Escrow Agreement not agreed to by the Supplier;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to the Power Supply Agreement or the Default Escrow Agreement or any documents connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Utility's liability hereunder; and
- (e) any change in the structure or organisation of the Utility as a result of a Change in Law, insolvency of the Utility or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration center for Alternative Dispute Resolution (the “**Rules**”) or such other rules as may be mutually agreed by the Parties.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [Chennai] and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have jurisdiction over all matters arising out of or relating to this Deed.

10.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Deed constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Deed or any transaction contemplated by this Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or the Utility with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Priority of agreements

In the event of any conflict between the Power Supply Agreement and this Agreement, the provisions contained in this Deed shall prevail over the Power Supply Agreement.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Deed in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Deed or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third party beneficiaries

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Deed expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

This Deed shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Continuation of Deed

Any corporation or association into which the Utility may be converted or merged, or with which it may be consolidated or to which it may sell or transfer

its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Utility hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Utility and the Supplier shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Utility and the Supplier shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED
THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

THE COMMON SEAL OF SUPPLIER
has been affixed pursuant to the
resolution passed by the Board of
Directors of the Supplier at its meeting
held on the day of 20...hereunto
affixed in the presence of ..., Director,
[who has signed these presents in token
thereof and, Company Secretary /
Authorised Officer who has
countersigned the same in token
thereof][£]:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE UTILITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

[£] To be affixed in accordance with the articles of association of the Supplier and the resolution passed by its Board of Directors.

SCHEDULE –L
(See Clause 23.2.1)

LETTER OF CREDIT

DATE:

TO: Limited (the “**Supplier**”)

FROM: (Specify the name and address of the bank issuing the Letter of Credit)^s
(the “**Bank**”)

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the “**Letter of Credit**”) No.... in favour of the Supplier named above, subject to the following terms and conditions:

1. On the instructions of the Utility, we hereby establish this Letter of Credit in favour of the Supplier in the maximum aggregate amount of Rs. ... (Rupees)^{ss} (the “**Monthly Payment**”), payable not more than once in a month upon notice received from the Supplier to this effect.
2. The Letter of Credit shall come into force with effect from, 20. and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year) falling after the year in which the Letter of Credit is issued (the “**Expiry Date**”), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.
3. This Letter of Credit provides security to the Supplier for the payment obligations of the Utility under a power supply agreement datedentered into between the Utility and the Supplier (the “**Power Supply Agreement**”) for supply of MW of electricity from the Power Station owned and operated by the Supplier in the State of
4. Any reference to the Power Supply Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Power Supply Agreement or agreement into the terms and conditions of this Letter of Credit.
5. The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

^s As provided in Article 27 of the Power Supply Agreement, the bank issuing the Letter of Credit should be the bank which has been appointed as the Default Escrow Bank under the Default Escrow Agreement.

^{ss} As provided in the Power Supply Agreement, this amount shall be equal to 20% of the annual Capacity Charge payable by the

Utility to the Supplier. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Fixed Charge in accordance with the provisions of the Agreement.

- (i) a copy of the Monthly Invoice (as defined in the Power Supply Agreement) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and
 - (ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Power Supply Agreement) is in accordance with the Power Supply Agreement and that the amount due has remained unpaid and has not been disputed by the Utility.
- 6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Supplier has a right as between itself and the Utility to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.
- 7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Supplier that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Supplier is required to do for making effective its demand for payment in accordance with the Letter of Credit.
- 8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Supplier and the Utility that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated, entered into between the Bank, the Utility and the Supplier.
- 9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.
- 10. The Utility shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.
- 11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.
- 12. All costs and expenses in connection with this Letter of Credit are to be on account of the Utility.
- 13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce

Publication No. 590.

14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: (Name of Utility representative)
..... (Designation)
..... (Address, telephone and fax numbers)

To: (Name of the Bank representative)
..... (Designation)
..... (Address, telephone and fax numbers)

To: (Name of the Supplier representative)
..... (Designation)
..... (Address, telephone and fax numbers)

Signed and sealed this day of ..., 20... at .. .

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE –M
(See Clause 22.6)

REVENUE SHARE FROM SALE TO BUYER

Power Station:

Month:

Date	Sale under Clause 22.6		
	No. of units sold	Revenues realised (in '000 Rs.)	Revenue Share Due (in '000 Rs)
(1)	(2)	(3)	(4)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
Total			

Total Revenue Share:

Remarks, if any:

SCHEDULE –N
(See Clause 27.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 27.2.1 of the Agreement, the Utility and the Supplier shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-N.

2 Invitation for empanelment

2.1 The Utility shall invite offers from all reputable firms of Chartered Accountants who have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956/2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings; and neither the firm nor any of its partners should have been disqualified or black-listed by the Comptroller and Auditor General of India or the Utility.

2.2 Interested and eligible firms shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

The information furnished by each firm shall be scrutinised and evaluated by the Utility and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. 5 (five) firms scoring the highest points shall be included in the draft Panel of Chartered Accountants, which shall be conveyed to the Supplier for scrutiny and comments, if any. The Supplier shall be entitled to scrutinise the relevant records of the Utility to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Utility within 15 (fifteen) days of receiving the panel.

4 Mutually agreed panel

The Utility shall, after considering all relevant factors including the comments, if any, of the Supplier, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants. A fresh panel shall be prepared, in accordance with the provisions of this Schedule-N, after completion of every 5 (five) years or such earlier period as may be agreed between the Utility and the Supplier.

SCHEDULE –O
(See Clause 32.5)

VESTING CERTIFICATE

- 1 [The Distribution Company] represented by and having its principal offices at (the “**Utility**”) refers to the Power Supply Agreement dated (the “**Agreement**”) entered into between the Utility and (the “**Supplier**”) for supply of MW of electricity from the Power Station owned and operated by the Supplier in the State of
- 2 The Supplier has transferred to the Utility all the Allocated Coal in its possession and has also assigned and transferred to the Utility all rights and title in the Allocated Coal and the Fuel Supply Agreement.
- 3 The Utility hereby acknowledges compliance and fulfilment by the Supplier of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Utility shall be deemed to have acquired, and all title and interest of the Supplier in or about the Allocated Coal shall be deemed to have vested unto the Utility, free from any encumbrances, charges and liens whatsoever.
- 4 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Supplier to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Supplier in any manner of the same.

Signed this ... day of 20 ... at

AGREED, ACCEPTED AND
SIGNED

For and on behalf
Supplier by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

SIGNED, SEALED AND DELIVERED

For and on behalf of
Utility by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

2.

SCHEDULE –P
(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 The Distribution Company represented by and having its principal offices at (hereinafter referred to as the “**Utility**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at ..., (hereinafter referred to as the “**Supplier**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and
- 3 (insert name and particulars of Lenders’ Representative) and having its registered office at , acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Utility has entered into a power supply agreement dated with the Supplier (the “**Power Supply Agreement**”) for supply of MW of electricity from the Power Station at in the State of , and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Utility to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Supply Contract to a Nominated Company in accordance with the provisions of this Agreement and the Power Supply Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Utility has agreed and undertaken to transfer and assign the Supply Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Power Supply Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Supplier for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Utility for assignment/transfer of the Supply Contract as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Power Supply Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Power Supply Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Power Supply Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Supplier hereby agrees to assign the rights, title and interest in the Supply Contract to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Power Supply Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE SUPPLIER

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Supplier by a Nominated Company under and in accordance with the provisions of this Agreement and the Power Supply Agreement.
- 3.1.2 The Utility hereby agrees to substitute the Supplier by endorsement on the Power Supply Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Power Station as Supplier either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Supplier (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Utility for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Supplier for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Supplier by a Nominated Company in accordance with the provisions of this Agreement.

3.3 Substitution upon occurrence of Supplier Default

- 3.3.1 Upon occurrence of a Supplier Default, the Utility shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Supplier by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Utility within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Supplier by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Supplier by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Utility shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days;

provided that upon written request from the Lenders' Representative and the Supplier, the Utility shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Utility may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Utility and the Supplier hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Utility under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Power Station including the Power Supply Agreement to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Supplier towards the Utility under the Power Supply Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Supplier, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Utility for shortlisting the Bidders for award of the Supply Contract; provided that the Lenders' Representative may represent to the Utility that all or any of such criteria may be waived in the interest of the Project, and if the Utility determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Utility to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Power Station in accordance with the provisions of the Power Supply Agreement;
 - (b) endorse and transfer the Supply Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Utility has any objection to the transfer of Supply Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Utility, the Nominated Company shall be deemed to have been accepted. The Utility shall thereupon transfer and endorse the Supply Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Utility, the Lenders' Representative may propose another Nominated Company

whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Supplier.

- 3.4.5 The transfer of Contract hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Power Supply Agreement, be undertaken by transfer of no less than 51% (fifty one per cent) of the equity of the Supplier to the Nominated Company, and upon such transfer hereunder, the Nominated Company shall be deemed to be the Supplier under and in accordance with the provisions of this Agreement and the Power Supply Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Utility in selection of the Nominated Company shall be final and binding on the Supplier. The Supplier irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Utility taken pursuant to this Agreement including the transfer/assignment of the Supply Contract in favour of the Nominated Company. The Supplier agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Supplier's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Utility and the Supplier shall have no right or remedy to prevent, obstruct or restrain the Utility or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Supply Contract as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Supplier shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Supplier in the event of such Nominated Company's assumption of the liabilities and obligations of the Supplier under the Power Supply Agreement.

5 TERMINATION OF POWER SUPPLY AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Utility to terminate the Power Supply Agreement forthwith, and upon receipt of such notice, the Utility shall undertake Termination under and in accordance with the provisions of Article 31 of the Power Supply Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Utility is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Utility may terminate the Power Supply Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Outstanding Debt

The Utility and the Supplier hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Supplier, without any further reference to or consent of the Supplier, the debt outstanding and due to the Senior Lenders upon Termination of the Power Supply Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earlier of Termination of the Power Supply Agreement or when no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Supplier will indemnify, defend and hold the Utility and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Supplier of any of its obligations under this Agreement or on account of failure of the Supplier to comply with Applicable Laws and Applicable Permits.

7.1.2 The Utility will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Utility to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Supplier's obligations under the Power Supply Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Utility, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Supplier harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Supplier's obligations under the Power Supply Agreement, other than any loss, damage, cost and expense, arising out of

acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Utility, Supplier and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the Nani Palkhivala Arbitration center for Alternative Dispute Resolution (the “**Rules**”) or such other rules as may be mutually agreed by the Parties.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be [Chennai] and the language of arbitration shall be English.

8.2 Adjudication by the Commission

8.2.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 8.1, be submitted for adjudication by the Commission. For the avoidance of doubt, the Parties agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

8.2.2 Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 8.1 shall be followed to the extent applicable.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Utility unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Utility with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Power Supply Agreement and this Agreement, the provisions contained in the Power Supply Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

- 9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED
THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of THE UTILITY by:

(Signature) (Name) (Designation) (Address) (Fax No.)
(e-mail address)

THE COMMON SEAL OF SUPPLIER has

been affixed pursuant to the resolution passed by its Board of Directors at the meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:

(Signature) (Name) (Designation) (Address) (Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.

Appendices

APPENDIX-I
LIST OF BID-SPECIFIC PROVISIONS[£]

A. Provisions with currency-based footnotes

Footnotes with “£” sign

1. Clause 5.5: Obligations relating to transmission charges.
2. Article 11: Construction of the Power Station: Also address all provisions mentioned in the footnote.
3. Clause 21.2.1: Base Fixed Charge.
4. Clause 22.2.1: Fuel Charge.
5. Power Supply Agreement: Signature page.
6. Schedule-B: Development of the Power Station: Annex-I: Paragraph 6 and Annex-II: Paragraph 1.3.
7. Schedule-J: Default Escrow Agreement: Signature page.
8. Schedule-K: Deed of Hypothecation: Signature page.
9. Schedule-P: Substitution Agreement: Signature page.
10. Appendix-I: List of Bid-specific provisions.

Note: The above footnotes marked “£” shall be removed prior to execution of the PSA-DBFOO.

Footnotes with “\$” or “\$\$” signs

1. Heading of the Power Supply Agreement.
2. Schedule-L: Letter of Credit: From; and Paragraph 1.

Note: Non-numerical footnotes marked “\$” or “\$\$” shall not be deleted. They shall remain in the PSA-DBFOO to be executed between the Parties.

B. Provisions where curly brackets are used

1. Clause 7.1 (m): Representations and warranties of the Supplier
2. Clause 38.14 (a) and (b): Notices

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2 and D.
2. Clause 5.5: Obligations relating to transmission charges.
3. Clause 18.1: Installed Capacity.
4. Clause 21.2.1: Base Fixed Charge.
5. Clause 22.2: Fuel Charge.
6. Power Supply Agreement: Signature page.

[£] This Appendix-I contains a list of provisions that would need to be suitably modified for reflecting bid-specific provisions after the Supplier has been selected. This Appendix-I may be included in the draft Power Supply Agreement forming part of the Bid Documents. It may however, be deleted when the Power Supply Agreement is to be executed.

Note: All blank spaces in Schedules shall be retained in the Power Supply Agreement to be executed between the Parties. These shall be filled up as and when the format of the respective Schedule is used.

Annexure I

(Letter of Assurance issued by the Coal Supplier)